FILED
FEB 22 2005
OFFICE OF THE CLERK

(6)

No. 04-368

In the Supreme Court of the United States

ARTHUR ANDERSEN LLP,
PETITIONER,

v.

UNITED STATES OF AMERICA,
RESPONDENT.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

JOINT APPENDIX

Counsel for Petitioner

MAUREEN E. MAHONEY
Counsel of Record
ALEXANDRA A. E. SHAPIRO
J. SCOTT BALLENGER
MATTHEW K. ROSKOSKI
LATHAM & WATKINS LLP
555 11TH STREET, N.W.
SUITE 1000
WASHINGTON, DC 20004
(202) 637-2200

Additional Counsel Listed on Inside Cover

Counsel for Respondents

PAUL D. CLEMENT
Acting Solicitor General
Counsel of Record
CHRISTOPHER A. WRAY
Assistant Attorney General
ELIZABETH D. COLLERY
Attorney
DEPARTMENT OF JUSTICE
WASHINGTON, DC 20530
(202) 514-2217

PETITION FOR CERTIORARI FILED SEPTEMBER 14, 2004
CERTIORARI GRANTED JANUARY 7, 2005

CHARLES A. ROTHFELD
LEE H. RUBIN
MAYER, BROWN, ROWE & MAW
1909 K STREET, N.W.
WASHINGTON, DC 20006
(202) 263-3000

KERRY A. MILLER
ARTHUR ANDERSEN LLP
33 W. MONROE
18TH FLOOR
CHICAGO, IL 60603
(312) 507-2072

JOINT APPENDIX
TABLE OF CONTENTS

Page

United States Court of Appeals for the Fifth Circuit Relevant Docket Entries: *United States of America v. Arthur Andersen, LLP*, No. 02-21200 1

United States District Court for the Southern District of Texas Relevant Docket Entries: *United States of America v. Arthur Andersen, LLP*, No. H-02-121 4

Government's Exhibit 160B, AA BU Policy Statement No. 780 (June 1, 1984) (S.D. Tex. Docket No. 183, R.[1] 1193) 28

Government's Exhibit 160A, AA BU Policy Statement No. 760 (Feb. 1, 2000) (S.D. Tex. Docket No. 183, R. 1193) 42

Excerpt from Government's Exhibit NT1009, Notes prepared by Nancy Temple (Oct. 9, 2001) (S.D. Tex. Docket No. 183, R. 1183) 93

Government's Exhibit 1012A, E-mail from Nancy Temple, as forwarded from Michael Odom to David Duncan, re: Document Retention Policy (Oct. 12, 2001) (S.D. Tex. Docket No. 183, R. 1190) 94

Government's Exhibit 1018B, E-mail from Nancy Temple re: Press Release Draft, with attachment (Oct. 16, 2001) (S.D. Tex. Docket No. 183, R. 1189) 95

---

[1] "R." refers to the pagination applied to the District Court record as filed in the Fifth Circuit.

Government's Exhibit 1017B, Enforcement Letter from the SEC to Enron (Oct. 17, 2001) (S.D. Tex. Docket No. 183, R. 1189)..... 103

Excerpt from Government's Exhibit NT1029, Notes prepared by Nancy Temple (Oct. 29, 2001) (S.D. Tex. Docket No. 183, R. 1182)..... 120

Government's Exhibit 1030A, Enforcement Letter from the SEC to Enron (Oct. 30, 2001) (S.D. Tex. Docket No. 183, R. 1186)..... 122

Government's Exhibit 928B.2, SmartCounsel Form, as forwarded by E-mail from Kerry Miller to Duffy Wilson (May 31, 2002)) (S.D. Tex. Docket No. 183, R. 1177 (cited as 928A.2))..... 125

Government's Exhibit 180D, Chart of City Central Courier Deliveries) (S.D. Tex. Docket No. 183, R. 1193)..... 133

Indictment (Mar. 7, 2002)) (S.D. Tex. Docket No. 1, R. 1-8)..... 134

Excerpts from Andersen's Proposed Jury Instructions at 4-6 (Apr. 26, 2002) (S.D. Tex. Docket No. 32, R. 147-49)..... 141

Excerpts from Andersen's Response to Government's *in Limine* Memorandum of Law Regarding Evidentiary Issues and Jury Instructions at 24-26 (May 3, 2002) (S.D. Tex. Docket No. 56, R. 424-26)..... 146

Excerpts from Trial Transcript of May 14, 2002 (S.D. Tex. Docket No. 106)..... 149

Excerpts from Trial Transcript of May 15, 2002 (S.D. Tex. Docket No. 108)..... 160

Excerpts from Trial Transcript of May 16, 2002 (S.D. Tex. Docket No. 115)..... 161

Excerpts from Trial Transcript of May 17, 2002 (S.D. Tex. Docket No. 116)..... 164

Excerpts from Trial Transcript of May 22, 2002 (S.D. Tex. Docket No. 127)..... 170

Excerpts from Trial Transcript of May 23, 2002 (S.D. Tex. Docket No. 132)..... 178

Excerpts from Andersen's Rebuttal to the Government's Reply Memorandum of Law Regarding Jury Instructions at 9-10, 16-17 (May 24, 2002) (S.D. Tex. Docket No. 140, R. 931-32, 938-39)..... 193

Excerpts from Trial Transcript of June 3, 2002 (S.D. Tex. Docket No. 177)..... 198

Excerpts from Trial Transcript of June 4, 2002 (S.D. Tex. Docket No. 180)..... 202

Excerpts from Trial Transcript of June 5, 2002 (S.D. Tex. Docket No. 186)..... 210

Excerpts from Government's Memorandum of Law in Opposition to Andersen's Motion for a Judgment of Acquittal or a New Trial at 14-20 (Aug. 1, 2002) (S.D. Tex. Docket No. 237, R. 1417-23).....215

Excerpts from Brief of Appellant Arthur Andersen, LLP, at 70 (5th Cir. Mar. 25, 2003) 221

Excerpts from Brief for the United States at 92 (5th Cir. June 2, 2003) 223

Excerpts from Reply Brief of Appellant Arthur Andersen, LLP, at 24-25 (5th Cir. June 30, 2003).....225

ITEMS PREVIOUSLY REPRODUCED

In accordance with Supreme Court Rule 26.1, the following items have been omitted in printing this joint appendix because they appear on the following pages of the appendix to the Petition for a Writ of Certiorari (Sept. 14, 2004)

Opinion of the United States Court of Appeals for the Fifth Circuit, *United States of America v. Arthur Andersen, LLP*, No. 02-21200 (5th Cir. rev. June 24, 2004).....1a

Memorandum Opinion, *United States of America v. Arthur Andersen LLP*, Crim. Action No. H-02-121 (S.D. Tex. May 24, 2002).....35a

RELEVANT DOCKET ENTRIES

U.S. Court of Appeals for the Fifth Circuit

No. 02-21200

11/5/02	Direct criminal case docketed. NOA filed by Appellant Arthur Andersen LLP. [02-21200] (trm)
	* * *
1/17/03	Record on appeal filed. Vol(s) of Pleadings: 8 Vol(s) of Transcripts: 40 Exhibits: 3 boxes SEALED: 2 envs (1-PSI, Objections, Addendum & Recommendations) (1-Doc. #'s 19, 24, 54, 61, 89, 162, 163, 164, 192, 196, 197, 221 vol 10). [02-21200] ROA ddl satisfied. (rf)
	* * *
3/25/03	Appellant's Brief filed by Appellant Arthur Andersen LLP. Copies of Brief: 8 # of pages: 85 Word count: 20,894 Date of COS: 3/24/03 Disk Provided [Y/N]: Y Sufficient [Y/N]: Y. [4139139-1] [02-21200] A/Pet's Brief ddl satisfied. E/Res's Brief due on 4/24/03 for USA. (tdb)
03/25/03	Record excerpts filed by Appellant Arthur Andersen LLP # of copies: 4 Sufficient [Y/N]: Y. [02-21200] (tdb)
	* * *

6/2/03 Appellee's Brief filed by Appellee USA. Copies of Brief: 8 # of pages: 114 Word count: 27,591 Date of COS: 5/27/03 Hand Delivered [Y/N]: n Disk Provided [Y/N]: y Sufficient [Y/N]: n Needs PDF brief on disk. [4207790-1] [02-21200] E/Res's Brief ddl satisfied. Reply Brief due on 6/16/03 for Arthur Andersen LLP. Sufficient Brief due on 6/12/03 for USA. (jca)

* * *

6/12/03 Brief made sufficient by Appellee USA Replacement Disk Provided [Y/N]: y [02-21200] Sufficient Brief ddl satisfied. (rsm)

6/30/03 Reply brief filed by Appellant Arthur Andersen LLP. Copies of Brief: 7 # of pages: 59 Word count: 13,969 Date of COS: 6/27/03 Disk Provided [Y/N]: Y (2) Sufficient [Y/N] : Y. [4237440-1] [02-21200] Reply Brief ddl satisfied. (cpd)

* * *

8/27/03 Case calendared for oral argument [02-21200] (pft)

* * *

10/3/03 Supplemental authorities (FRAP 28 (j)) filed by Appellant Arthur Andersen LLP [4629955-1]. [02-21200] (pft)

10/9/03 Oral argument heard. Case argued by Maureen E Mahoney for Appellant Arthur Andersen LLP, Elizabeth D Collery for Appellee USA [02-21200] (pft)

6/16/04 Opinion filed. Issd in T form? y Mandate pull date is 7/7/04. [02-21200] (jma)

6/16/04 Judgment entered and filed. [02-21200] (jma)

6/21/04 Filing letter of counsel for Ms Nancy Temple dated 6/18/04 requesting to correct opinion [4867026-2] Sufficient [Y/N]: y [02-21200] (jma)

7/8/04 Mandate issued. Approved BOC Issued (Y/N)?: n [02-21200] Mandate pull date satisfied. (jca)

* * *

9/20/04 Supreme Court notice that petition for certiorari was filed on 09/14/04 by Appellant Arthur Andersen LLP. Supct No.: 04-368 [02-21200] (cav)

1/14/05 Supreme Court order received granting petition certiorari [4946118-1] by Appellant Arthur Andersen LLP on 01/07/05. [02-21200] (cav)

U.S. District Court for the Southern District of Texas

No. 4:02-CR-00121-ALL

03/07/2002	1	INDICTMENT as to Arthur Andersen, LLP (1) count(s) 1 ,filed. (pgalvan) (Entered: 03/15/2002)
	* * *	
03/07/2002	3	MOTION by USA as to Arthur Andersen, LLP to seal indictment , filed. (pgalvan) (Entered: 03/15/2002)
03/07/2002	4	ORDER granting [3-1] motion to seal indictment as to Arthur Andersen, LLP (1) (Signed by Magistrate Judge Nancy K. Johnson), entered. Parties ntfd. (pgalvan) (Entered: 03/15/2002)
	* * *	
03/14/2002	5	MOTION by USA as to Arthur Andersen, LLP to unseal indictment , filed. (pgalvan) (Entered: 03/15/2002)
03/14/2002	6	ORDER granting [5-1] motion to unseal indictment as to Arthur Andersen, LLP (1) (Signed by Magistrate Judge Nancy K. Johnson), entered. Parties ntfd. (pgalvan) (Entered: 03/15/2002)

03/14/2002		Indictment unsealed as to Arthur Andersen, LLP (pgalvan) (Entered: 03/15/2002)
	* * *	
03/20/2002	10	Arraignment held before Magistrate Judge Calvin Botley Ct Reporter: ERO App: S Buell/A Weissman f/Govt;R. Hardin f/deft , filed., Plea of Not Guilty: Arthur Andersen, LLP (1) count(s) 1 Scheduling Order issued. ETT: 5 weeks (pgalvan) (Entered: 03/20/2002)
	* * *	
03/27/2002	17	TRANSCRIPT filed in case as to Arthur Andersen, LLP for Pretrial conference Hearing for dates of 3/20/02 before Judge Harmon , filed. (Court Rptr: Dye) (ckrus) (Entered: 03/27/2002)
	* * *	
04/01/2002	23	JOINT Proposed Jury Questions with diskette by Arthur Andersen, LLP, USA , filed. (unsealed per order #146) (ckrus) (Entered: 05/30/2002)
	* * *	
04/26/2002	32	Proposed Jury Instructions by Arthur Andersen, LLP, filed. (unsealed per order #146) (ckrus) (Entered: 05/30/2002)
	* * *	

04/26/2002	41	Proposed Jury Instructions by USA as to Arthur Andersen, LLP, filed. (unsealed per order #146) (ckrus) Modified on 05/30/2002 (Entered: 05/30/2002)
04/29/2002	36	TRANSCRIPT filed in case as to Arthur Andersen, LLP for Pretrial Conference Hearing for dates of April 26, 2002 before Judge Harmon , filed. (Court Rptr: Gayle Dye) (lbrown) (Entered: 04/29/2002)
		* * *
04/29/2002	37	IN LIMINE MEMORANDUM of Law by USA as to Arthur Andersen, LLP regarding evidentiary issues and jury instructions , filed. This document unsealed per Order #129. (khightower) (Entered: 05/23/2002)
		* * *
05/02/2002	52	TRANSCRIPT filed in case as to Arthur Andersen, LLP for Pretrial Hearing for dates of April 29, 2002 before Judge Harmon , filed. (Court Rptr: Johnny C. Sanchez) (lbrown) (Entered: 05/02/2002)
		* * *
05/03/2002	56	RESPONSE by Arthur Andersen, LLP to [37-1] memorandum of law, filed. This document unsealed per Order #129. (khightower) Modified on 05/23/2002 (Entered: 05/23/2002)

		* * *
05/07/2002	69	TRANSCRIPT filed in case as to Arthur Andersen, LLP for Hearing (Volume 1) for dates of 05/06/02 before Judge Harmon , filed. (Court Rptr: Johnny Sanchez and Gayle Dye) (khightower) (Entered: 05/07/2002
		* * *
05/08/2002	75	TRANSCRIPT filed in case as to Arthur Andersen, LLP for Jury Trial Hearing for dates of 5/7/02 before Judge Harmon and a jury , filed. (Court Rptr: J Sanchez/G Dye) (Vol II) (pgalvan) (Entered: 05/09/2002)
		* * *
05/09/2002	87	TRANSCRIPT filed in case as to Arthur Andersen, LLP for Jury Trial Hearing for dates 5/8/02 before Judge Harmon and a jury , filed. (Court Rptr: J Sanchez/G Dye – Vol. III) (pgalvan) (Entered: 05/10/2002)
		* * *
05/10/2002	93	TRANSCRIPT filed in case as to Arthur Andersen, LLP for Jury Trial Hearing for dates of 5/9/02 before Judge Harmon and a jury , filed. (Court Rptr: J Sanchez/ G Dye) (pgalvan) (Entered: 05/13/2002)
		* * *

05/13/2002	94	TRANSCRIPT filed in case as to Arthur Andersen, LLP for ury Trial Hearing for dates of 5/10/02 before Judge Harmon and a jury, filed. (Court Rptr: J Sanchez/G Dye) (pgalvan) (Entered: 05/13/2002)

* * *

05/14/2002	99	MEMORANDUM of Law by USA to preclude evidence by deft Andersen that some employees acted without corrupt intent as to Arthur Andersen, LLP, filed. (pgalvan) (Entered: 05/14/2002)
05/14/2002	100	TRANSCRIPT filed in case as to Arthur Andersen, LLP for Jury Trial Hearing for dates of 5/13/02 before Judge Harmon and a jury, filed. (Court Rptr: J Sanchez/G Dye) Vol. VI (pgalvan) (Entered: 05/15/2002)

* * *

05/15/2002	104	Response by Arthur Andersen, LLP to [99-1] Govt memorandum of law to preclude evidence that some Andersen employees acted without corrupt intent, filed. (pgalvan) (Entered: 05/15/2002)

05/15/2002	106	TRANSCRIPT filed in case as to Arthur Andersen, LLP for Proceedings Hearing for dates of May 14, 2002 before Judge Harmon, filed. (Court Rptr: Johnny C. Sanchez and Gayle L. Dye) (lbrown) Modified on 10/23/2002 (Entered: 05/15/2002)

* * *

05/16/2002	108	TRANSCRIPT filed in case as to Arthur Andersen, LLP for Proceedings Hearing for dates of May 15, 2002 before Judge Harmon, filed. (Court Rptr: Johnny Sanchez, Gayle Dye) (lbrown) (Entered: 05/16/2002)

* * *

05/17/2002	115	TRANSCRIPT filed in case as to Arthur Andersen, LLP for Jury Trial Hearing for dates of 5/16/02 before Judge Harmon and a jury, filed. (Court Rptr: J Sanchez/G Dye) (pgalvan) (Entered: 05/20/2002)
05/17/2002	118	MOTION by USA as to Arthur Andersen, LLP for jury instruction, filed. (khightower) (Entered: 05/20/2002)

* * *

05/20/2002	116	TRANSCRIPT filed in case as to Arthur Andersen, LLP for Jury Trial Hearing for dates of 5/17/02 before Judge Harmon and a jury, filed. (Court Rptr: J Sanchez/ G Dye) (pgalvan) (Entered: 05/20/2002)

* * *

05/20/2002	121	First Jury Corrspondence filed as to Arthur Andersen, LLP (khightower) (Entered: 05/21/2002)
05/21/2002	120	TRANSCRIPT filed in case as to Arthur Andersen, LLP for Jury Trial Hearing for dates of 5/20/02 before Judge Harmon and a jury, filed. (Court Rptr: J Sanchez/G Dye) VOL. XI (pgalvan) (Entered: 05/21/2002)

* * *

05/22/2002	122	REPLY by USA as to Arthur Andersen, LLP to response to Govt In Limine Memorandum of Law regarding evidentiary issues and jury instructions , filed. (pgalvan) (Entered: 05/22/2002)
05/22/2002	124	Vol XII TRANSCRIPT filed in case as to Arthur Andersen, LLP for Proceedings Hearing for dates of 5/21/02 before Judge Harmon , filed. (Court Rptr: Sanchez and Dye) (ckrus) (Entered: 05/22/2002)

* * *

05/23/2002	125	Proposed Jury Instructions by USA as to Arthur Andersen, LLP , filed. (ckrus) (Entered: 05/23/2002)
05/23/2002	127	TRANSCRIPT filed in case as to Arthur Andersen, LLP for Jury Trial Hearing for dates of 5/22/02 before Judge Harmon and a jury, filed. (Court Rptr: J Sanchez/G Dye - Vol XIII) (pgalvan) (Entered: 05/23/2002)
05/23/2002	128	Jury note No. 2 filed as to Arthur Andersen, LLP (pgalvan) (Entered: 05/23/2002)

* * *

05/24/2002	131	MEMORANDUM of Law by Arthur Andersen, LLP in opposition to the Govt proposal that the Court inform the jury that Andersen's employees have refused to testify as to Arthur Andersen, LLP , filed. (pgalvan) (Entered: 05/24/2002)
05/24/2002	132	TRANSCRIPT filed in case as to Arthur Andersen, LLP for Jury Trial Hearing for dates of 5/23/02 before Judge Harmon and a jury, filed. (Court Rptr: J Sanchez/G Dye) VOL XIV (pgalvan) (Entered: 05/24/2002)

05/24/2002	134	MOTION by USA as to Arthur Andersen, LLP for jury instructions , filed. (ckrus) (Entered: 05/24/2002)
		* * *
05/24/2002	140	Rebuttal by Arthur Andersen, LLP to the Govt reply memorandum of law regarding jury instructions as to Arthur Andersen, LLP , filed. (pgalvan) (Entered: 05/29/2002)
		* * *
05/28/2002	136	TRANSCRIPT filed in case as to Arthur Andersen, LLP for Jury Trial Hearing for dates of 05/24/02 before Judge Harmon , filed. (Court Rptr: Johnny Sanchez, Gayle Dye) VOL XV (khightower) Modified on 05/29/2002 (Entered: 05/29/2002)
05/28/2002	137	TRANSCRIPT filed in case as to Arthur Andersen, LLP for Jury Trial Hearing for dates of 05/25/02 before Judge Harmon , filed. (Court Rptr: Johnny Sanchez) VOL XVI (khightower) (Entered: 05/29/2002)
05/28/2002	138	TRANSCRIPT filed in case as to Arthur Andersen, LLP for Jury Trial Hearing for dates of 05/27/02 before Judge Harmon , filed. (Court Rptr: Johnny Sanchez, Gayle Dye) VOL XVII (khightower) (Entered: 05/29/2002)

		* * *
05/29/2002	147	TRANSCRIPT filed in case as to Arthur Andersen, LLP for Jury Trial Hearing for dates of 5/28/02 before Judge Harmon and a jury , filed. (Court Rptr: J Sanchez/G Dye – Vol. XVIII) (pgalvan) (Entered: 05/29/2002)
		* * *
05/30/2002	159	TRANSCRIPT filed in case as to Arthur Andersen, LLP for Jury Trial Hearing for dates of 5/29/02 before Judge Harmon and a jury , filed. (Court Rptr: J Sanchez/G Dye) – Vol. XIX (pgalvan) Modified on 05/31/2002 (Entered: 05/31/2002)
05/31/2002	160	ORDER on Govt Motions to Preclude Evidence of some Andersen employees acting without corrupt intent and evidence of "preserved bulk materials" as to Arthur Andersen, LLP (Signed by Judge Melinda Harmon), entered. Parties ntfd. Govt Motion to preclude evidence by deft Andersen that some employees acted without corrupt intent is GRANTED. It is further ordered that Govt Motion to preclude deft Andersen from introducing evidence regarding preserved bulk materials and the Ripepi E-mails is GRANTED. (pgalvan) (Entered: 05/31/2002)

	• • •	
05/31/2002	165	Declaration of Sharon Thibaut as to Arthur Andersen, L.L.P., filed. (khightower) (Entered: 06/03/2002)
05/31/2002	166	SUPPLEMENTAL MEMORANDUM OF LAW by Arthur Andersen, LLP to [32-1] jury instructions, filed. (khightower) (Entered: 06/03/2002)
05/31/2002	168	TRANSCRIPT filed in case as to Arthur Andersen, LLP for Jury Trial Hearing for dates of 05/30/02 before Judge Harmon, (Court Rptr: Johnny Sanchez and Gayle Dye) (VOL. XX) (khightower) Modified on 06/05/2002 (Entered: 06/03/2002)
	• • •	
06/03/2002	170	STATEMENT by USA of position regarding Jury Instructions as to Arthur Andersen, LLP, filed. (khightower) (Entered: 06/03/2002)
	• • •	
06/03/2002	173	Vol XXI TRANSCRIPT filed in case as to Arthur Andersen, LLP for Proceedings Hearing for dates of 5/31/02 before Judge Harmon, filed. (Court Rptr: Sanchez and Dye) (ckrus) Modified on 06/04//2002 (Entered: 06/04/2002)
	• • •	

06/03/2002	175	RESPONSE by Arthur Andersen, LLP to [170-1] Govt statement of position regarding jury instructions, filed. (pgalvan) (Entered: 06/04/2002)
	• • •	
06/04/2002	177	TRANSCRIPT filed in case as to Arthur Andersen, LLP for Jury Trial Hearing for dates of 06/03/02 before Judge Harmon, filed. (Court Rptr: Johnny Sanchez and Gayle Dye) (VOL. XXII) (khightower) (Entered: 06/05/2002)
	• • •	
06/05/2002	180	TRANSCRIPT filed in case as to Arthur Andersen, LLP for Jury Trial Hearing for dates of 6/4/02 before Judge Harmon (Ct Rptr: J Sanchez/G Dye – Vol. XXIII) (pgalvan) (Entered: 06/06/2002)
	• • •	
06/05/2002	182	Certification of Exhibits to the Jury as to Arthur Andersen, LLP , filed. (pgalvan) (Entered: 06/06/2002)
	• • •	
06/05/2002	199	Court's Instructions to the Jury as to Arthur Andersen, LLP , filed. (ckrus) (Entered: 06/17/2002)

06/06/2002	186	TRANSCRIPT filed in case as to Arthur Andersen, LLP for Jury Trial Hearing for dates of 6/5/02 before Judge Harmon and a jury, filed. (Court Rptr: J Sanchez/G Dye – Vol. XXIV) (pgalvan) (Entered: 06/06/2002)
		• • •
06/06/2002	185	#1 Jury notes filed as to Arthur Andersen, LLP unsealed per crd. (ckrus) (Entered: 06/17/2002)
06/06/2002	208	#2 Jury Notes and Court's Response as to Arthur Andersen, LLP (signed by Judge Melinda Harmon), filed. (ckrus) (Entered: 06/17/2002)
06/06/2002	209	#3 Jury Notes and Court's Response as to Arthur Andersen, LLP (signed by Judge Melinda Harmon), filed. (ckrus) (Entered: 06/17/2002)
06/06/2002	210	#4 Jury Notes and Court's Response as to Arthur Andersen, LLP (signed by Judge Melinda Harmon), filed. (ckrus) (Entered: 06/17/2002)
06/06/2002	211	#5 Jury notes filed as to Arthur Andersen, LLP (ckrus) (Entered: 06/17/2002)
		• • •

06/07/2002	212	#6 Jury notes filed as to Arthur Andersen, LLP (ckrus) (Entered: 06/17/2002)
		• • •
06/09/2002	213	#7 Jury Notes and Court's Response as to Arthur Andersen, LLP (signed by Judge Melinda Harmon), filed. (ckrus) (Entered: 06/17/2002
		• • •
06/12/2002	200	Court's Instructions to the Jury as to Arthur Andersen, LLP , filed. (ckrus) (Entered: 06/17/2002)
06/12/2002	214	#8 Jury notes filed as to Arthur Andersen, LLP (ckrus) (Entered: 06/17/2002)
		• • •
06/13/2002	215	#9 Jury Notes and Court's Response as to Arthur Andersen, LLP (signed by Judge Melinda Harmon), filed. (ckrus) (Entered: 06/17/2002)
06/13/2002	216	#10 Jury notes filed as to Arthur Andersen, LLP (ckrus) (Entered: 06/17/2002)
06/13/2002	217	#11 Jury notes filed as to Arthur Andersen, LLP (ckrus) (Entered: 06/17/2002)
		• • •

06/14/2002	203	MEMORANDUM by Arthur Andersen, LLP as to Arthur Andersen, LLP to Jury Note No. 9, filed. (ckrus) (Entered: 06/17/2002)
06/14/2002	218	#12 Jury notes filed as to Arthur Andersen, LLP (ckrus) (Entered: 06/17/2002)
		* * *
06/15/2002	205	JURY VERDICT as to Arthur Andersen, LLP Guilty: Arthur Andersen, LLP (1) count 1 , filed. (ckrus) (Entered: 06/17/2002)
06/15/2002	206	Special Verdict Form as to Arthur Andersen, LLP, filed. (ckrus) (Entered: 06/17/2002)
		* * *
06/15/2002	219	#13 Jury notes filed as to Arthur Andersen, LLP (ckrus) (Entered: 06/17/2002)
06/15/2002	220	#14 Jury notes filed as to Arthur Andersen, LLP (ckrus) (Entered: 06/17/2002)

06/19/2002		Duplicate copies of all exhibits admitted during the trial have been placed in 6 expandex folders and sent to the fileroom. All originals will be maintained by the Appeals section for appeal purposes as to Arthur Andersen, LLP , filed. (khightower) (Entered: 06/20/2002)
06/25/2002	222	MOTION by Arthur Andersen, LLP for Judgment of Acquittal , or for new trial , filed. (khightower) (Entered: 06/26/2002)
		* * *
06/27/2002	224	TRANSCRIPT filed in case as to Arthur Andersen, LLP for Hearing for dates of 06/15/02 before Judge Harmon , filed. (Court Rptr: Johnny Sanchez) Vol. 25 (khightower) Modified on 06/27/2002 (Entered: 06/27/2002)
06/27/2002	225	TRANSCRIPT filed in case as to Arthur Andersen, LLP for Hearing for dates of 06/14/02 before Judge Harmon , filed. (Court Rptr: Johnny Sanchez) Vol. 26 (khightower) Modified on 06/27/2002 (Entered: 06/27/2002)

06/27/2002	226	TRANSCRIPT filed in case as to Arthur Andersen, LLP for Hearing for dates of 06/08/02 before Judge Harmon, filed. (Court Rptr: Johnny Sanchez) Vol. 27 (khightower((Entered: 06/27/2002)
06/27/2002	227	TRANSCRIPT filed in case as to Arthur Andersen, LLP for Hearing for dates of 06/09/02 before Judge Harmon , filed. (Court Rptr: Johnny Sanchez) (khightower) (Entered: 06/27/2002)
06/27/2002	228	TRANSCRIPT filed in case as to Arthur Andersen, LLP for Hearing for dates of 06/11/02 before Judge Harmon , filed. (Court Rptr: Johnny Sanchez) Vol. 30 (khightower) (Entered: 06/27/2002)
06/27/2002	229	TRANSCRIPT filed in case as to Arthur Andersen, LLP for Hearing for dates of 06/12/02 before Judge Harmon , filed. (Court Rptr: Johnny Sanchez) Vol. 31 (khightower) (Entered: 06/27/2002)
06/27/2002	230	TRANSCRIPT filed in case as to Arthur Andersen, LLP for Hearing for dates of 06/14/02 before Judge Harmon , filed. (Court Rptr: Johnny Sanchez) Vol. 33 (khightower) (Entered: 06/27/2002)

06/27/2002	231	TRANSCRIPT filed in case as to Arthur Andersen, LLP for Hearing for dates of 06/13/02 before Judge Harmon , filed. (Court Rptr: Johnny Sanchez) Vol. 34 (khightower) (Entered: 06/27/2002)

* * *

06/27/2002	233	TRANSCRIPT filed in case as to Arthur Andersen, LLP for Jury Trial for dates of 6/10/02 before Judge Harmon and a jury , filed. (Court Rptr: J Sanchez) Vol XXIX (pgalvan) Modified on 06/28/2002 (Entered: 06/28/2002)
06/27/2002	234	TRANSCRIPT filed in case as to Arthur Andersen, LLP for Jury Trial Hearing for dates of 6/13/02 before Judge Harmon and jury , filed. (Court Rptr: J Sanchez – Vol. XXXII) (pgalvan) Modified on 06/28/2002 (Entered: 06/28/2002)

* * *

08/01/2002	236	MOTION by USA as to Arthur Andersen, LLP to strike the exhibits containing inadmissible post-verdict juror statements attached to [222-1] motion for Judgment of Acquittal, [222-2] motion for new trial , filed. (khightower) (Entered: 08/02/2002)

08/01/2002	237	MEMORANDUM by USA as to Arthur Andersen, LLP in opposition to [222-1] motion for Judgment of Acquittal, [222-2] motion for new trial , filed. (khightower) (Entered: 08/02/2002)
08/13/2002	238	RESPONSE by Arthur Andersen, LLP in support of [222-1] motion for Judgment of Acquittal, [222-2] motion for new trial , filed. (khightower) (Entered: 08/14/2002)

* * *

09/11/2002	242	MEMORANDUM OPINION AND ORDER as to Arthur Andersen, LLP granting [236-1] motion to strike the exhibits containing inadmissible post-verdict juror statements attached to [222-1] motion for Judgment of Acquittal, [222-2] motion for new trial as to Arthur Andersen, LLP (1), denying [222-1] motion for Judgment of Acquittal as to Arthur Andersen, LLP (1), denying [222-2] motion for new trial as to Arthur Andersen, LLP (1) (signed by Judge Melinda Harmon), entered. Parties ntfd. (khightower) (Entered: 09/11/2002)

* * *

10/10/2002	247	SEALED Confidential Sentencing Recommendation regarding Arthur Andersen, LLP to the Court, filed and placed in vault. (ksanders) (Entered: 10/11/2002)
10/10/2002	248	REVISED FINAL PRESENTENCE INVESTIGATION REPORT (Sealed) as to Arthur Andersen, LLP , filed. (ksanders) (Entered: 10/11/2002)
10/16/2002	250	Sentencing held before Judge Melinda Harmon Ct Reporter: K Metzger App: S Buell, A Weissmann, M Friedrich f/Govt; R Hardin, L Rubin, D McInerney f/deft. Arthur Andersen, LLP (1) count(s) 1 - 5 yrs probation, $500,000 fine, $400 special assessment , filed. (pgalvan) (Enterd: 10/22/2002)

* * *

10/21/2002	251	JUDGMENT as to , Arthur Andersen, LLP (1) count(s) 1 (Signed by Judge Melinda Harmon), entered. Parties ntfd. The Statement of Reasons has been placed under seal in the envelope with the Original Presentence Report. Copies of the SOR have been sent to the appropriate defense counsel, the AUSA, and the US Marshal. (pgalvan) (Entered: 10/22/2002)

10/22/2002	252	NOTICE OF APPEAL of judgment and sentence by Arthur Andersen, LLP (1) count(s) 1 FILING FEE $ not paid , filed. (jdavenport) (Entered: 10/23/2002)
10/23/2002		Notice of appeal and Copy of docket as to Arthur Andersen, LLP to USCA: [252-1] appeal. Parties ntfd. (jdavenport) (Entered: 10/23/2002)
		* * *
10/24/2002		USCA appeal fees received FILING FEE $ 105.00 RECEIPT # 525501 as to Arthur Andersen, LLP Re: [252-1] appeal Parties ntfd. (jdavenport) (Entered: 10/30/2002)
10/28/2002	256	Transcript Order Form received, advising transcript is already on file with the Clerk's Office; Pretrial Conference for dates of 03/20/02 and 04/26/02 before Judge Harmon as to Arthur Andersen, LLP , filed. (khightower) (Entered: 10/30/2002)
10/28/2002	257	Transcript Order Form received, advising transcript is already on file with the Clerk's Office; Pretrial Conference for dates of 04/29/02 before Judge Harmon as to Arthur Andersen, LLP , filed. (khightower) (Entered: 10/30/2002)

11/07/2002	258	TRANSCRIPT as to Arthur Andersen, LLP Re: Sentencing Hearing for dates of 10/16/02 before Judge Harmon , filed. Ct Reporter: Kathy Metzger (khightower) (Entered: 11/12/2002)
11/21/2002		USCA Case Number as to Arthur Andersen, LLP Re: [252-1] appeal USCA NUMBER: 02-21200 (fmremp) (Entered: 11/26/2002)
12/27/2002	259	SEALED TRANSCRIPT as to Arthur Andersen, LLP , filed. (khightower) (Entered: 01/06/2003)
01/14/2003		Certified and transmitted record on appeal consisting of 8 volumes of pleadings, 39 volumes of transcript and 17 envelopes of sealed pleadings to U.S. Court of Appeals as to Arthur Andersen, LLP: [252-1] appeal . Circuit No. 02-21200. Parties ntfd. (jdavenport) Modified on 01/14/2003 (Entered: 01/14/2003)
07/13/2004	260	JUDGMENT OF USCA (certified copy)for Arthur Andersen, LLP on June 16, 2004 Mandate Issued July 6, 2004 [252-1] appeal CCA No. 02-21200 affirming judgment/order Arthur Andersen, LLP (1) count(s) 1 , filed. (jdavenport) (Entered: 07/13/2004)

07/13/2004	261	Copy of Fifth Circuit Court of Appeals Opinion as to Arthur Andersen, LLP , filed. (jdavenport) (Entered: 07/13/2004)
		* * *
07/27/2004		Record on Appeal for Arthur Andersen, LLP returned from U.S. Court of Appeals: [252-1] appeal USCA No. 02-21200 consisting of 8 volumes of pleadings, 39 volumes of transcript, 17 envelopes of sealed pleadings and 3 boxes of exhibits, reassembled and forwarded to the file room. (jdavenport) (Entered: 07/27/2004)
07/28/2004	262	RECEIPT for Withdrawal of Original and copies of all Exhibits for Arthur Andersen, LLP , filed. (mmapps) (Entered: 07/28/2004)
08/04/2004	263	RECEIPT for Withdrawal of Exhibits for USA as to Arthur Andersen, LLP , filed. (mmapps) (Entered: 08/04/2004)
08/19/2004		Record on Appeal for Arthur Andersen, LLP returned from U.S. Court of Appeals: [252-1] appeal USCA No. (jdavenport) (Entered: 08/19/2004)

01/18/2005	264	The petition for a writ of certiorari filed with the Supreme Court has been granted. Court of Appeals Fifth Circuit Case No. 02-21200. United States Supreme Court Case no. 04-368 ,filed.(jdavenport,) (Entered: 01/18/2005)

GOVERNMENT'S EXHIBIT 160B

ARTHUR ANDERSON
October 31, 1999

AA BU POLICY STATEMENT

No. 780

Supersedes AW OM 83
Dated June 1, 1984

To: EACH ARTHUR ANDERSEN PARTNER, PRINCIPAL AND MANAGER

Subject: NOTIFICATION OF THREATENED OR ACTUAL LITIGATION, GOVERNMENTAL OR PROFESSIONAL INVESTIGATIONS, RECEIPT OF A SUBPOENA, OR OTHER REQUESTS FOR DOCUMENTS OR TESTIMONY (FORMAL OR INFORMAL)

1.0 BACKGROUND AND PURPOSE

1.1 The purpose of this Policy Statement is to address the procedures to be followed with respect to prompt notification of all litigation, investigation, and subpoena situations to the Arthur Andersen Legal Group ("AA Legal Group"). Section 2.0 outlines the process for notification of threatened or actual commencements of litigation, governmental and/or professional investigations. Section

3.0 outlines the process to be implemented upon receipt of subpoenas or other requests for documents or testimony.

1.2 Strict compliance with the following procedures is critical. Effective co-coordination and management of AA's defense and handling of subpoenas can only be achieved if the notification procedure is followed without exception. Without such prompt notification, AA may not be able to resolve or minimize problems before litigation is commenced and/or preserve all of its rights and options.[1]

2.0 PROCEDURES TO BE FOLLOWED REGARDING NOTIFICATION OF THREATENED OR ACTUAL LITIGATION, GOVERNMENTAL OR PROFESSIONAL INVESTIGATIONS

2.1 This section sets forth the notification procedures to be followed in those situations where professional practice litigation against AA or any of its personnel has been commenced, has been threatened or is judged likely to occur, or when governmental or

---

[1] Although this Statement deals with matters relating to the Arthur Andersen Business Unit ("AA"), it is possible that certain notifications, subpoenas, etc. relating to AA may refer to Andersen Worldwide ("AW") or Andersen Consulting ("AC"). These should also be handled as set forth in this Statement, i.e., forwarded to the AA Legal Group. Upon receipt of these matters, the AA Legal Group will forward them on to the appropriate individuals at AW or AC.

professional investigations that may involve AA or any of its personnel have been commenced or are judged likely. This section also sets forth certain notification procedures to be followed if a payment is to be made (either in cash or in services, including fee adjustments) to resolve a problem situation with a client.

2.2 These procedures are also applicable if individual AA personnel are named in any threatened or pending litigation or investigation involving AA's professional practice. This Statement deals not only with professional practice matters (i.e., relating to AA's Service Categories: ABA, TLBA, BC and GCF), but also, with litigation involving administrative matters, including without limitation, fee collections.

2.3 Prompt notification to the AA Legal Group office that serves your Area[2] shall be made in the circumstances and in the manner described below in Sections 2.4 – 2.10.

2.4 Institution of Legal Action against AA or Its Personnel - Notification shall be made promptly to both the Chicago office of the AA

[2] For the Americas, contact the AA Legal Group in Chicago at (312) 931-4391 (Facsimile: (312) 462-8021)

For Asia/Pacific, contact the AA Legal Group in Hong Kong at 852-2853-9196 (Facsimile: 852-2543-9472).

For EMEIA, contact the AA Legal Group in Paris at 33-1-55-61-0994 (Facsimile: 33-1-55-61-0999).

Legal Group and the relevant Area office of the AA Legal Group along with a copy of the relevant court papers (e.g., summons and complaint, writ, statement of claim) whenever litigation is commenced against AA or AA personnel. This policy applies not only when AA is named as a defendant (either directly by a plaintiff, or by another defendant, i.e., as a third party defendant) but also when counterclaims are made against AA in actions brought by AA, as in an action for collection of fees.

2.5 Threatened Legal Action - Notification to the relevant Area office of the AA Legal Group as well as to the relevant practice director or their functional equivalent should also be made promptly whenever legal action against AA or AA personnel is threatened or appears imminent or likely. [Please refer to Exhibit 1 for examples of circumstances to be reported pursuant to this paragraph.]

2.6 Potential Institution of Legal Action by AA - Consultation with the relevant Area office of the AA Legal Group must be made prior to the commencement of any legal action by AA, including without limitation, an action for collection of fees.

2.7 Potential Settlement of Dispute in Absence of Litigation – Consultation with the relevant Area office of the AA Legal Group must be made prior to proposing an arrangement to

make either a cash payment or to provide free or reduced rate services (including fee adjustments) in order to resolve a practice problem. The tax aspects of a proposed arrangement involving a cash payment should be carefully reviewed with the appropriate HOTD and Tax Practice Director or their functional equivalent. In such a situation, the relevant Area office of the AA Legal Group must be involved since a properly prepared release in these types of situations is of great value to AA. As a general matter, AA will insist upon receiving a written release of any claims related to the practice problem prior to making a payment, agreeing to provide services or agreeing to forgive unpaid fees.

2.8 Governmental Investigations – Notification to the relevant Area office of the AA Legal Group should be made promptly when AA personnel become aware of investigations involving a client or former client and AA or any AA personnel, (e.g., investigations by a federal or state grand jury, the FBI, the Justice Department, the SEC or the IRS in the United States; the RCMP or the Department of National Revenue in Canada; the Department of Trade and Industry or the Inland Revenue in the United Kingdom, court-appointed receivers or liquidators and similar agencies in these or other countries). Where a subpoena is served upon AA to compel the attendance of AA personnel at a

hearing or deposition or for the production of documents in connection with such an investigation, the procedures set forth in Section 3.0 of this Policy Statement regarding receipt of a subpoena or other requests for documents or testimony must be followed.

2.9 Professional Investigations - Notification to the relevant Area office of the AA Legal Group should be made promptly when any professional society or regulatory body (such as the AICPA, a state CPA society, the ICAEW or similar professional society or any State Board of Accountancy or similar regulatory agency) investigation is commenced or threatened or a complaint is filed against AA or AA personnel.

2.10 Legal Action Relating to Charitable or Not-For-Profit Activities - Notification to the relevant Area office of the AA Legal Group should be made promptly when any AA personnel are named or threatened to be named as defendants in any action arising out of such person's service to a non-client charitable or not-for-profit organization.

3. PROCEDURES TO BE FOLLOWED REGARDING RECEIPT OF A SUBPOENA OR OTHER REQUESTS FOR DOCUMENTS OR TESTIMONY (Formal or Informal)

3.1 This section sets forth the process that each

country and office should have in place for handling service of (i.e., delivery) and response to a subpoena or other requests for documents or testimony, including requests or demands, whether informal or formal, from government agencies, stock exchanges or any other third parties (herein referred to collectively as "subpoena(s)") that are addressed to AA as well as those addressed to specific individuals.[3] This process applies to any and all such subpoenas - civil and criminal.[4] [5] [6]

[3] There are other AA policies that provide guidance regarding non-litigation-related requests for access to AA files. These policies and procedures are set forth in Chapter 1, Section 2 of Audit Objectives and Procedures ("AOP"). In responding to these types of requests for access to files, there is no need to consult with the relevant Area office of the AA Legal Group prior to providing access as long as the guidance set forth in Chapter 1, Section 2 of AOP are followed AND there is no threat of potential litigation or other potential problem associated with the release of files in these situations. If however, for any reason, you believe there to be any risk associated with the release of files in these situations, you should consult with the relevant Area office of the AA Legal Group prior to producing any documents.

[4] This Policy Statement applies to all subpoena served on AA or AA personnel including those related to Litigation Support and expert engagements as well as employee administrative matters.

[5] Prompt notification to the relevant Area office of the AA Legal Group is also critical in those unusual circumstances where demands for document and/or testimony are made in the form of search warrants or seizures, as well as those exceptional situations where arrest warrants for AA personnel are issued. Such requests and/or demands often require an office to comply immediately or at best in a relatively short time period. Every effort should be made to cooperate with government officials in these situations. At the same time, immediate notification to the relevant Area office of the AA Legal Group is critical in order for counsel to assess the situation and develop a strategy to properly respond to the demand.

3.2 Each office should establish a subpoena log in order to track and document pertinent information relating to each and every subpoena that is delivered, e.g., date and time the subpoena was served and accepted, the case name listed on the subpoena, the name of the individual who accepted service, the type of service (e.g., hand delivery, marshal's service, mail or courier), to whom and when the subpoena was circulated, the date when the subpoena was faxed to the relevant Area office of the AA Legal Group and information regarding confirmation that the subpoena was received and assigned to someone in the AA Legal Group. Exhibit 2 attached hereto is an example of such a log.

3.3 As part of this process, a person should be designated in each office as the individual who is authorized to accept service of subpoenas on behalf of AA for that office (the "authorized individual"). There should also be a "back up" individual designated who is also familiar with this process in the event that the authorized individual is absent from the office. It is important that the existence of the process and the identity of the authorized individual are properly communicated to everyone in the office,

[6] The procedures set forth in this Policy Statement apply to requests for AA historical information as well as policies and procedures when such requests are related to any situation covered by this Statement (e.g., materials contained in Research Manager, the AARD, Subject File Riders, training course lists or descriptions).

especially receptionists and other employees who may have a higher chance of contact with marshals or other process servers.

3.4 When a marshal or other process server attempts to serve a subpoena addressed to AA at one of our offices, the authorized individual should be notified immediately. The authorized individual (or the back-up designee) should be the ONLY person in that office authorized to accept service on behalf of AA. The authorized individual should not, under any circumstance, accept service of a subpoena that names a specific individual. In such a case, the named individual should be contacted immediately to accept service personally. If the named individual is not present, the process server should be advised of this fact. If the process server leaves such a subpoena despite being advised that the named individual is not present, written notation should be made of the circumstance.

3.5 Upon acceptance of a subpoena (whether accepted by the authorized individual or a person specifically named in a subpoena), notation should be made on the actual subpoena reflecting the date and time the subpoena was served as well as the identity of the person making the notation.

3.6 A copy of the subpoena should then be faxed promptly to the relevant Area office of the AA Legal Group, and circulated to the

Market Circle Leader, Office Managing Partner, relevant engagement partner, Practice Director or their functional equivalent, and the head of the practice in that office. The practice Director or their functional equivalent should consider the need to advise the Service Category Managing Practice Director or their functional equivalent. In certain countries, the Country/Regional Managing Partner may want to receive a copy.

3.7 After faxing the subpoena to the relevant Area office of the AA Legal Group, the authorized individual should follow-up by telephone or Lotus Notes with the relevant Area office of the AA Legal Group to confirm that the subpoena was received and that it has been assigned to someone for handling in the relevant Area office of the AA Legal Group. The authorized individual must receive positive confirmation of receipt and assignment from the relevant Area office of the AA Legal Group either via Lotus Notes, an Octel or a live conversation. All of this information should be recorded in the subpoena log so that the relevant information can be tracked both by the office and the AA Legal Group, if necessary.

4.0 No communication with anyone external to AA regarding receipt of the subpoena, including the related client and/or a client's internal or external counsel, should be made without prior consultation

with the relevant Area office of the AA Legal Group. Similarly, no action should be taken with respect to responding to the subpoena, including without limitation production of documents, agreeing to appear for testimony, etc., without prior consultation with the AA Legal Group.

5.0 The guidelines and procedures outlined herein constitute the controlling AA BU guidance relating to the subject matter of this AA BU Policy Statement. Any other guidelines or procedures established at the Area, Region or Country level, or with respect to a specific Service Category, are supplemental and should be issued as Country Supplements to this Policy Statement, subject to the approval process outlined in Policy Statement No. 110-2.

6.0 Any questions with respect to these procedures should be directed to the relevant Area office of the AA Legal Group.

7.0 REFERENCES:

AA BU PS No. 630 - Collection of Accounts Receivable
AA BU PS No. 690 - Serving as an Expert Witness
AA BU Audit Objectives and Procedures - Section 2
AA BU PS No. 720 - Risk Management
AWP No. 107 - Legal Counsel
AA U.S. ABA Bulletin No. 99-11 - Management of Sensitive Client and Professional Issues

DANIEL D. BECKEL
Managing Partner - AA BU
Legal Group

JAMES A. FRIEDLIEB
Director of Litigation - Risk Management

APPROVED:

ROBERT G. KUTSENDA
Managing Partner - Global Risk Management

EXAMPLES OF SITUATIONS TO BE REPORTED

Any situation that may result in a claim being made against the Firm related to services provided to clients of the Firm previously or currently should be reported pursuant to Paragraph 2.5 of this Policy Statement. Examples of such situations include, but are not limited to, the following:

- notification from clients, third parties or their counsel threatening legal action against the Firm;
- serious oral threats from clients or third parties to make a claim against the Firm;
- oral indications from management or owners that the Firm was somehow responsible for the failure of operations or the failure to detect fraud;
- the subsequent discovery of material events that cause us to withdraw or amend a previously issued report or opinion; [handwritten bracket and asterisk in original]
- the restatement of prior financial results by an attest client;
- significant criticism, either oral or written, of the quality of our work for a client by:
    - regulatory authorities (i.e. securities commissions);
    - government officials or significant elected representatives;
    - other accountants
- seizure of client files by securities regulators or other government bodies;
- notices, warnings, disciplinary actions against the Firm partners or personnel regarding the quality of professional work;
- indications by management of insolvent/bankrupt enterprises, or guarantors of their debts, that they make take action against the Firm;
- the receivership/bankruptcy of a client subsequent to the issue of an auditors' report which did not include a going concern modification;

- Notice of Assessment or Re-Assessment in response to returns prepared / reviewed by the Firm where it appears that the Firm may have made an error;
- situations in which any taxation authority is proposing to, or has, assessed income or any other tax, or is denying a deduction or credit, contrary to prior advice given by us where that prior advice may now appear to be deficient in any way; and
- situations in which any taxation authority is suggesting that any representations made by us on behalf of a client are inaccurate, incomplete or misleading.

GOVERNMENT'S EXHIBIT 160A

ARTHUR ANDERSEN
February 1, 2000

AABU POLICY STATEMENT
NO. 760
Supersedes AW OMs 68, 87
101 and 123; ABA Bulletin 95-09
and Tax Bulletin 95094

TO: EACH ARTHUR ANDERSEN PARTNER, PRINCIPAL AND MANAGER

SUBJECT: CLIENT ENGAGEMENT INFORMATION - ORGANIZATION, RETENTION AND DESTRUCTION

1.0 BACKGROUND AND PURPOSE

1.1 The confidentiality and proper management of client engagement information is critical to the Arthur Andersen Business Unit (AABU). This Policy Statement describes our policies with regard to protecting the confidentiality of client information through its creation, active use to support or defend our work, and destruction.

1.2 The policies described in this memo relate to hard copy and electronic documents and files and client information used or produced by AA BU personnel in providing arranged services to clients. While the specific guidelines employed by service lines may vary based on the technologies employed, all current and future service lines should adhere to the guiding principles and policies described

herein. It is the responsibility of each service line and Service Category to create and maintain policies and procedures consistent with this Policy Statement.

1.3 Certain Service Categories and service lines may wish to adopt different retention guidelines based on local regulations, customs and practices, confidentiality agreements or other privileged protections and arrangements. If different guidelines are appropriate, it is the responsibility of the heads of these groups to obtain approval from the Managing Partner – Global Risk Management and communicate these different guidelines as appropriate.

1.4 More specific guidance can be obtained from other documents published or utilized by the AA BU relating to the use and confidentiality of client information such as the Personnel Reference Binder, Ethical Standards/Independence, Audit Objectives and Procedures and Service Category/Line Policies and Procedures.

2.0 EXECUTIVE SUMMARY

This Statement establishes critically important policies that enable us to protect confidential client information, retain it as needed to support or defend our work, and eliminate or destroy it when it is no longer needed. The following summarizes the significant policies expressed herein; however, it is necessary to read the entire Policy Statement for a complete understanding.

1. Material pertaining to <u>each engagement</u> will be contained in one central file (hard copy and/or

electronic). (Section 3.1)

2. This central file will not include any personal or gratuitous information. (Section 3.1)
3. Engagement information is the property of the AA BU and will not be copied or electronically transferred to personal files of any AA personnel. (Section 3.10)
4. The legal and professional requirements in each country will determine the type of material, and the retention period required for engagement files. These requirements may vary by service line. In the U.S., such files will be generally retained for six years (see Exhibit A). (Section 4.4)
5. Only final documents will be retained; drafts and preliminary versions of information will be destroyed currently. (Section 3.5)
6. Engagement material not to be retained permanently (see Exhibit A) will be destroyed after the required retention period, subject to the approval of the engagement partner or division head. (Section 4.5)
7. Deletion of information from electronic files will be accomplished in such a way that precludes the possibility of subsequent retrieval by AA personnel or third parties. (Section 4.6)
8. Voice messages recorded in Octel or other voicemail systems must be deleted monthly or sooner. (Section 4.1.2(d))
9. In cases of threatened litigation [previous two words circled in original], no related information will be destroyed. (Section 3.5.4)
10. Each country, office and service line should review their documentation, retention and destruction policies, assess where they are, develop a plan for getting into compliance with the principles of this Policy Statement, and

monitor compliance on an ongoing basis. (Section 3.8)

3.0 GUIDING PRINCIPLES

3.1 One Central Engagement File

3.1.1 Only one central file (electronic, hard-copy or combination) will be maintained for the storage of engagement and related documents. This central file will contain all information related to the engagement

3.1.2 Multiple copies of engagement documents should not exist. Each person needing access to engagement documents should follow a process to obtain documents from the central file. The central file should contain only that information which is relevant to supporting our work. It should not contain gratuitous comments or personal information.

3.1.3 At the end of the engagement, all electronic documents in all locations should be reviewed and any of continuing significance should be included in the central file area. All other documents stored in any other location should be deleted. The central file area should then be moved to a permanent storage area such as a CD and then deleted. This permanent media should be stored with the hard copy workpapers.

3.2 Compliance with Country and Governmental Regulatory Requirements

All our document retention and destruction practices should adhere to the applicable country, legal, professional and regulatory requirements. Should any of the policies in this statement violate such requirements, we should adhere to the applicable country legal requirements, and advise the Managing Partner – Global Risk Management of the departure from this policy.

3.3 Standard Classification and Indexing System

While no specific system is mandated, a well-designed system should use the same organization structure for both hard copy and electronic documents to facilitate retrieval and easy application of the retention/destruction policy.

3.4 Retain Only Essential information

3.4.1 Information gathered or considered in connection with performing client engagements should be evaluated by the engagement partner and manager, and only essential information to support our conclusions should be retained.

3.4.2 Management of each service line should develop and publish documentation standards indicating the types of information that should be retained.

3.4.3 It is the engagement partner's responsibility to assure compliance with these standards.

3.5 Timely Document Destruction

3.5.1 Engagement documents (in whatever form –

paper, electronic, voice) must be destroyed in accordance with the destruction guidelines set forth in Exhibit A.

3.5.2 The "central file" objective is crucial to accomplishing this objective, and to having confidence that it has been accomplished.

3.5.3 Information having relevance to our opinion or findings should be part of the central client engagement files. Drafts and preliminary versions of memos and reports, superseded workpapers, backup diskettes, and other types of information not in the central client engagement files should be destroyed when they are no longer useful to the engagement and no later than when the engagement is completed. Draft versions of documents should be discarded or deleted at the time the final document is completed. Individuals who create these drafts are responsible for destroying them. Exceptions to this may exist in situations where the pre-final versions are the working papers (the source documents for supporting our work) in which case they should be retained.

3.5.4 Engagement personnel may want to advise clients of our destruction policy in order to eliminate their reliance on our files for prior year information.

3.6 Appropriate Discarding of Confidential Information

3.6.1 Each office should have appropriate procedures for handling wastepaper that

ensure that wastepapers are securely handled after they leave the office and that confidential papers are burned, shredded or otherwise safely and completely destroyed.

3.6.2 For electronic files, appropriate techniques (such as "absolute delete") should be used to make sure the data cannot be reconstructed from the storage mechanism on which it resided.

3.7 Generic Form

Copies (or portions) of engagement-related documents that AA saves for research, template, risk management, training, best practices or other similar purposes must be saved in a generic manner – e.g., client names changed to fictional names ("ABC Corp"). This is to avoid inadvertently disclosing client information.

3.8 Compliance

3.8.1 Global Risk Management will be responsible for assuring compliance of each Service Category with this Statement. This may be accomplished through the practice review program, internal audit or other appropriate means.

3.8.2 Each country, office and service line should review their documentation, retention and distribution policies, assess where they are, develop a plan for getting into compliance with the principles of this Policy Statement, and monitor compliance going forward.

3.9 Local Procedures

The Director – Administration for each office is responsible for the implementation of a comprehensive file management program that includes systematically controlling files during their lifetime. This means proactively managing records a) at creation, b) during the active use and c) during destruction or movement to offsite retention facilities. This Statement generally refers to the "office" as the implementor of those policies; in some geographical areas, a country or a group of offices may be the responsible entity.

3.10 Personal Use of Client Information

It is a violation of AA BU policy for personnel to use or access client engagement materials, with no substantial business purpose. Engagement information is the property of Arthur Andersen, and will not be moved, copied or electronically transferred to personal files.

4.0 PROCEDURES

This section contains the following information and guidelines:

4.1 Indexing Workpapers, Reports and Electronic Information
4.2 Storage of Working Papers, Reports and Electronic Information
4.3 Highly Sensitive Information
4.4 Retention Guidelines
4.5 Destruction Guidelines
4.6 Suggestions for Deleting Electronic Data
4.7 Delay of Destruction

4.1 Indexing Workpapers, Reports and Electronic Information

4.1.1 Hard copy working papers and reports should be indexed by the Files Department of each office as they are received. The Files Department (Files) will assign an index code to each file.

(a) An index code is composed of two parts – the Firm client code (see Firmwide Client List), and a file number. The file number should consist, at a minimum, of the two digits of the year (e.g., 98 for 1998), plus a number serially assigned to each file received for that year. It maybe useful to assign additional code letters or numbers as a prefix or suffix to the file number to further distinguish the contents of the file (i.e., report, working papers, etc.), and/or the practice to which the file pertains. For instance, the first tax file received for 1998 tax work for XYZ Company, Inc., might be indexed XYZ123-TR981. This could indicate a 1998 tax return ("TR") file.

Once an office adopts a numbering system, it should be applied to all new files to establish uniform indexing.

(b) Where there is more than one file on an individual engagement, the partner, manager or senior may want the files indexed in a particular sequence which will be convenient for future reference.

To do this, all workpapers for that engagement should be sent to the File Department at the same time, accompanied by a listing of the files in the order in which file numbers are to be assigned to them. If the individual sending papers to the Files Department wishes to index them in advance, he or she may request that the Files Department reserve numbers for that purpose.

(c) Working papers and reports of associated entities are filed under their unique client code.

4.1.2 Electronic data should be indexed and stored as described below, or stored on appropriate storage media and included with the hard copy workpapers. The file covers on the hard copy files should indicate the location of any related electronic information.

(a) <u>Information Retained on the Network</u>

Information retained on the network should be filed by client.

All client files stored on a networked file server should be stored in a manner as follows: J:\division\client\year\filetype\ documents

If the network is accessible by multiple parties, the data should be stored in a manner as follows: J:\division\ptr\mgr\

client\year\filetype\documents

This standard format will facilitate locating documents and will ease identifying documents ready to be destroyed within the defined timeframe. It will also reduce the risk of duplicate copies or multiple versions that are accidentally retained.

Documents can be password protected, if appropriate, to help safeguard the information. In exceptional cases, data can be stored offline on disks or CDs to prevent access from unauthorized individuals.

(b) Information Retained on PC Hard Drives

All client files stored on PC hard drives should be indexed as follows: c:\data\client\year\filetype\documents

This information should be eliminated when it is no longer useful. At that time, the appropriate engagement documents should be stored on the network or on appropriate storage media filed with the hard copy workpapers.

(c) Information Retained on Engagement Site LANs

See Chapter 1, Section 2 of Audit Objectives and Procedures (AOP) for ABA policies regarding information on

ELAN.

(d) Information Retained on Voicemail

Any supporting documentation on voicemail should be converted to electronic or hardcopy memo and filed with the engagement documents. Accordingly, voicemails should not be retained for longer than 30 days.

(e) Complete Files Retained Together

All engagement items should be placed in the hard copy file at the time the file is submitted to the Files Department for storage. The hard copy file should be complete, including any electronic files. Only final versions of data should be stored in the file. Printed copies can substitute for electronic copies and e-mail.

4.2 Storage of Working Papers, Reports and Electronic Information

4.2.1 The following policies apply to the storage of working papers:

(a) Current files should be stored in the office before transfer to storage; older files may be placed in storage outside the office in space provided by the office building or in a public or rented warehouse. Local offices can determine the number of years to retain on site.

(b) Reasonable protection against fire and other hazards should be provided in storage areas by the use of metal doors, fire-retardant walls, or other devices.

(c) Appropriate listing and indexing of such files should be maintained to facilitate access to them when required.

(d) Once approved for filing by the engagement partner or manager, sign-out procedures should be established to control the access and location of such files.

(e) Appropriate procedures should be established to prevent unauthorized access to working papers in client locations, our office or in public storage. Such papers contain confidential information, and the integrity of that information must be maintained. Accordingly, client information should not be left overnight on desks, floors, etc.

(f) In-office storage areas should be securely locked after hours. Public or rented warehouse space should not be available to persons other than AA personnel or authorized warehouse employees as necessary to file or retrieve files.

4.2.2 Methods of storing network backup, archive and other related tape, are covered fully in the AA Admin Binder, and should be referred to when developing destruction

procedures for each location.

4.2.3 The following procedures ordinarily should be followed for the storage of electronic CDs or diskettes:

(a) CDs or diskettes will be used only for a specific client. Storing of multiple client datafiles on the same CDs or diskettes should be avoided.

(b) CDs or diskettes should be stored in our hard copy working paper files. For 8½ x 14 inch and other sized working paper files, a cardboard/vinyl diskette storage board should be used. For 8 ½ x 11 inch and other sized binders, vinyl holder inserts should be used. These supply items can be obtained through Central Purchasing.

(c) Each CD or diskette and any separate working paper files of printouts, etc., should be labeled with:
Client Name and Client Code
Fiscal Year-End or Period of Project
Project Name
Date of Last Update

(d) When backup copies of the CDs or diskettes and related documentation are deemed necessary, they should be stored offsite. If this is not practical, the backup copies should be kept in a separate protective cabinet outside of the General and/or Division file departments. These backup copies

should also be controlled and indexed.

4.2.4 The engagement partner is responsible for assuring that all unnecessary information is destroyed before storage of client files (hard-copy and electronic).

4.3 Highly Sensitive Information

Because all client information within our organization is considered confidential, attempts to classify such information by degree of confidentiality or to provide differing protective procedures generally are to be avoided. However, where unusually sensitive information is involved or when a client specifically requests that we exercise extra precaution with respect to the confidentiality of certain information, or where the files are subject to attorney-client or accountant-client privilege, the procedures detailed below apply:

(1) In most cases, the material in question should be placed in the regular files under seal and should be labeled indicating the restrictions on opening it.

(2) In rare and extreme cases (such as investigations of officers of companies, or in cases involving public personalities), the information relating to such investigations may be highly restricted so that only approved access to such information is permitted. In these situations, the AA BU "Secretary Files" can be used to restrict access to such data. Counterparts to the AA BU Secretary Files are maintained in each office under the

direction of the Office Managing Partner (OMP) so these files do not leave the individual office.

(3) When the AA BU Secretary Files are used for this purpose, the restricted information should be indexed "AA BU Secretary File C-8" for client files.

(4) When information or a file is deposited in the AA BU Secretary Files under such circumstances, the file should carry a label indicating:

(a) the name of the entity;

(b) a general description of the information;

(c) the names of partners and managers having knowledge of the material; and

(d) to whom and under whose direction such information can be disclosed.

(5) When highly sensitive information (as described above) is deposited in the AA BU Secretary Files of an office, a file front (in the case of working papers) or a report cover (in the case of a report) must be filed and indexed in our regular files without any contents except reference to the AA BU Secretary File. In most cases, the only document appearing in the regular files will be a copy of the letter to the AA BU Secretary Files. In this way, our regular files will include. a record of all papers and reports while at the same time providing methods by which access to their contents may

be completely restricted.

(6) In the case of files subject to the attorney-client or accountant-client privilege, Service Category specific procedures may apply.

The confidentiality of information entrusted to us should be conscientiously protected in all phases of our professional activities.

4.4 Retention Guidelines

4.4.1 When working papers are no longer needed to support or defend our work, they should be destroyed. As a general rule, all working papers should be retained for six years and then destroyed. This period is predicated upon legal statutes of limitations in the United States.

4.4.2 File retention requirements in the Service Categories and service logs are summarized on Exhibit A. The retention periods apply to both electronic and hardcopy information. Exhibit E contains policy suggestions for Electronic Data Retention. Each country management should determine if these exhibits should be revised for their practices. If different practices are appropriate, the Global Risk Management Group should be advised.

4.4.3 All client-related files, such as those containing correspondence, or other records and documents, should be retained until not useful. Material contained in client folders or other files maintained by individual

partners and managers should be purged, and out-of-date papers and information should be destroyed in accordance with the procedures established in this Statement. However, no client-related materials in any files should be retained more than six years unless the related working papers prepared in connection with a professional engagement for a particular client are also required to be retained. See 3.4.6 for exceptions for certain tax related matters.

4.4.4 Assurance and Business Advisory (ABA)

Generally, the purpose of preparing and retaining ABA working papers is to provide documentation and evidence in support of a professional report They should not be retained beyond the period of their usefulness for this function as set forth in Exhibit A. Historical information about a client's accounts and financial statements should be available from client records, and our working papers are not a proper permanent source of such data.

4.4.5 Tax, Legal and Business Advisory

Our Tax and Business Advisor (TBA) work involves much more than preparation and review of income tax returns. Accordingly, we impose on all our TBA services the same standards of practice that we prescribe for our income tax return engagements, except where those standards clearly have no application.

Tax working papers provide a medium to accumulate reference material necessary to provide documentation in support of tax work products such as tax returns, tax opinions, refund claims, protests, etc. They also provide support for decisions made regarding matters affecting a client's tax posture. Such working papers should not be retained beyond the period of their usefulness for these functions as set forth in Exhibit A. Historical information regarding such matters should be available from client records, and tax working papers are not a proper permanent source of such data. Positions taken and elections made on tax matters are evident from copies of the relevant tax work products themselves.

See Section 5 of "Tax and Business Advisory Services Policies and Standards – Worldwide for additional policies related to tax files and working papers and file contents.

Working papers, documents and files related to the Legal Practice will be retained according to the regulation, customs and practices of the legal profession in each country. Accordingly, the Country Tax and Legal Partner should prepare a country supplement outlining the policies to be followed. In this connection, it should be noted that many law firms retain client information until termination of their relationships and, in other cases, may destroy information shortly after completion of an assignment. See Legal Practice

Worldwide Bulletin – 97.04 for general standards of documentation.

4.4.6 Business Consulting and Global Corporate Finance (BC and GCF)

The major purpose of retaining BC and GCF working paper files is to provide documentation to support a recommendation made or conclusion reached on a particular engagement. Such papers should not be retained beyond the period of their usefulness for this function, as set forth in Exhibit A. Other material (e.g., copies of source documents, reports, and organization charts) should be left with the client or destroyed at the conclusion of the engagement unless they are a necessary part of that support.

4.4.7 Other Service Lines

Special considerations may apply to certain service lines and retention periods in certain lines may be requested by the client (particularly law firms) or the courts, in which cases the Global Risk Management Group should be advised.

4.5 Destruction Guidelines

4.5.1 The destruction of all working papers and electronic data must be accomplished in such a way as to prevent the data from falling into unauthorized hands and to prevent any possibility of reconstruction from partially destroyed files.

4.5.2 The procedures outlined below are to be followed with respect to the destruction of hardcopy working paper files. Cremation, shredding, mulching or pulping procedures are preferable. Where available, commercial facilities that are bonded and that provide proof of destruction should be used for destruction of records:

(a) Once each year, the Director – Administration in each office will initiate a comprehensive file listing, organized by service line, to be used with respect to ABA, TLBA, BC and GCF working papers which are anticipated to be destroyed under the normal retention policies set forth above.

(b) The Office Managing Partner or area Service Category Head is to issue a working paper file destruction memorandum (see Exhibit B) each year reemphasizing the BU retention polices and requesting each partner in the office to identify within 30 days any files among those anticipated to be destroyed which should be retained. <u>These exceptions must be approved by an area Service Category Head and be supported by sound reasons.</u> The memorandum will advise each partner as to where the comprehensive listing discussed in the preceding paragraph is available and reemphasize the relevant criteria discussed earlier in this Statement. As deemed necessary by the

Managing Partner Office (or Service Category Head), this circulation may include the partners transferred to other offices in recent years or engagement partners from referring offices.

(c) The Managing Partner – Office (or Service Category Head) is to determine the most practical means to make the comprehensive file listing available for partner review and to assure materials (if any) required to be retained under the policy guidelines set forth above are identified.

(d) Each partner is responsible for identifying materials to be retained (if any), and for responding to the working paper file destruction memorandum in writing (see Exhibit B), listing the files (if any) which should be retained, and the reason retention is appropriate.

(e) The Director – Administration will make arrangements for destruction of all materials not specifically identified for retention based on a review and compilation of all the partner responses and will coordinate any required follow-up procedures necessary to be certain <u>all</u> partners have responded.

(f) A responsible individual should check the files to be destroyed against the approved list, control the destruction process and prepare a summary of disposition of files (see Exhibit C) which

is to be retained permanently in the office.

4.5.3 The primary purposes for retaining electronic information on diskettes or networks are to support conclusions, to provide a backup to the copy left with the client or for use in creating subsequent year working papers, carryforward balances, etc. This information should not be retained beyond the period of its usefulness for these functions, as set forth above.

Electronic information should be retained for the same reasons and periods, and destroyed at the same time and in the same manner as hard copy working papers. Electronic data can exist in a number of different locations such as on local area networks, Lotus Notes, servers, ELANs, Zip drives, PCs, archive tapes, backup tapes and diskettes. Destruction procedures need to be considered for all such media within your local office, and the Director – Administration should make sure all necessary destruction takes place. While the procedures necessary will need to change periodically, paragraph 3.6 suggests steps to make sure this happens

The Director of Technology serving each office is responsible for developing procedures for destroying appropriate electronic data. Exhibit E shows the majority of current possible locations, along with suggestions for destruction techniques.

4.5.4 In the event the AA BU is advised of litigation or subpoenas regarding a particular engagement, the related information should not be destroyed. See Policy Statement No. 780 – Notification of Litigation.

4.6 Suggestions for Deleting Electronic Data

4.6.1 Establish a routine for "wiping clean" or destroying all tapes, disks and other media on which records reside that are not meant to be retained for future access – such that the data is not retrievable.

4.6.2 Servers, desktop computers and laptops should be regularly purged of all unnecessary data.

4.6.3 Stored Lotus Notes messages, documents, databases and bulletin boards must be erased in accordance with prescribed limits on retention of such records.

4.6.4 Retention of back-up and archived file server records must be limited to the required standards – as described in the AA Admin Binder. When tapes are "recycled" for future use, they must be effectively "erased" (using a bulk eraser or other effective method) so that the data is made unretrievable.

4.6.5 Retention rules regarding Personal Computer hard-drive documents, floppy disk back-ups, personal/desk files and home files must be complied with – these "off-line"

storage opportunities must be subject to similar discipline as the network system.

4.6.6 Subject files, Smart and WIN Smart files, Proposal Toolkits, the TIKTS database and other such specialty/research/training/ reference sources in the AA BU must be monitored and "purged" of material that relates to client engagements and has exceeded its normal retention period; if such materials have continuing usefulness, they should be made generic if they are to be retained.

4.6.7 Annual statements (Exhibit D) should be obtained from each person confirming that a) he/she has destroyed all extraneous files and documents regarding engagements worked on (or they have been generically retained in a particular specialty, research or reference database) and b) any client information that they have retained on their PC's, on disks or in other locations has been destroyed.

4.6.8 All other data storage areas on the network should be purged on a regular basis to aid in enforcing proper client files storage.

4.6.9 An AATS approved disk wiping utility should be used when computers are turned in for reassignment or disposal

4.6.10 Any diskettes stored with working papers should either be destroyed or reformatted ("absolute delete") at the same time the papers are destroyed. Diskettes or other

external storage media used offsite should be managed by the engagement manager or senior. Any client data that needs to be retained should be moved to proper storage areas on the office file server and the diskettes destroyed or reformatted. This should be done at the end of the job.

4.7 Delay of Destruction

4.7.1 The purpose of obtaining responses from the responsible ABA, TLBA, BC and GCF partners for all working paper files destruction is to assure proper consideration at the appropriate level of any reason why such files should not be destroyed and to synchronize the extended period of their retention if this is necessary. Reasons for extended retention might include regulatory agency investigations (e.g., by the SEC), pending tax cases, or other legal action in connection with which the files would be necessary or useful. In such cases, material in our files cannot be altered or deleted (See Policy Statement No. 780 regarding notification of litigation). Other reasons might include litigation involving AA or the client, the number of open tax years, the possible need for historical information regarding loss or credit carryovers, LIFO inventory calculations, or arrangements that may have been made with specific clients to retain working papers under special circumstances. In some cases, destruction may be delayed to conform with the period of retention required of the client for its records on a particular matter, if the period

exceeds our policy retention periods. [Paragraph marked with handwritten vertical line and asterisk in original.]

4.7.2 If, in the judgment of the engagement partner(s), any working paper files should not be destroyed, notation to this effect and a brief description of the reason(s) therefore should be made in responding to the destruction request. Such information should be included in the office's annual summary disposition report (see Exhibit C), which should be reviewed annually thereafter (or at such later date as may be designated by the responsible partner(s)) for reconsideration.

4.8 Any questions related to this Statement should be directed to the Global Risk Management Group.

5.0 REFERENCES

- Audit Objectives and Procedures – Section 2
- Ethical Standards / Independence – Chapter 1
- Tax and Business Advisory Policies and Standards – Worldwide
- Legal Practice Worldwide Bulletin No. 97-04
- AABU Policy Statement No. 780 - Notification of Litigation

ROBERT G. KUTSENDA
Managing Partner – Global
Risk Management

APPROVED:

RICHARD E. BOULTON
Managing Partner – Strategy & Planning

CLEMENT W. EIBL
Managing Partner – Finance and Administration

AABU Policy Statement No. 760 — Exhibit A September 30, 1999

Client Engagement Information
Retention Guidelines for U.S. Practice

The information below summarizes the required retention periods for the U.S. Therefore, these policies may require modification for differing legal and professional requirements in other countries and service lines. Factors (which vary materially by country and by service line) relevant to the retention or destruction of working papers and other material include:

Custom and practice
Regulatory and statutory requirements
Statute of limitations
Legal ownership of working papers and other materials

The result is that each country and each Service Category and service line (or even, in some cases, possibly sub-service lines) potentially have differing requirements with regard to the need, or requirement, to retain working papers and other materials. The only practical approach is for our policies and procedures to be developed country by country and service line by service line. Lacking such, the policies outlined in this exhibit should be followed.

The appropriate Managing Partner – Country, in consultation with local legal counsel, is responsible for initiating any such required modifications and submitting them to the Global Risk Management Group for approval and distribution. However, in no event shall the retention period be shortened from the periods mentioned below if the engagement relates to work performed for an office in another country. Only the information described below

AABU Policy Statement No. 760 — Exhibit A September 30, 1999

should be retained.

As discussed in par. 4.5.4 of AA BU No. 760, if advised of litigation or subpoena, no related information should be destroyed (see AA BU No. 780).

Service Line	Type of Material	Retention Period
ABA – Financial Statement Assurance	Client File (a)/Engagement Knowledge Base/CAF(purged annually of superceded or non-relevant documents)	()
	Audit Workpapers/Central File	Permanently (e)
	Office copies of reports and financial statements	Six years
	(d) Filings with Government agencies which include (physically or by reference) our reports, such as 10K's and Registration State-ments filed with the SEC	Permanently (e)
		Permanently (e)
ABA – Business Risk Consulting and Advisory	Central File, including Working Papers	When no longer useful or needed to support an opinion. Maximum of Six years (f).
	Office Copies of Reports (d)	Permanently (e)

AABU Policy Statement
No. 760

Exhibit A
September 30, 1999

Service Line	Type of Material	Retention Period
ABA – AA Process Solutions	Central File, including working papers (Enterprise Center Clients)	Six years (f)
	Office Copies of Reports and Financial Statements	Permanently (e)
	Filings with Government Agencies which include (physically or by reference) our reports, such as 10Ks and Registration state-ments filed with SEC CAFs	Permanently (e)
	Project File Documentation, including: • SMART documentation and risk management action plan • Job Arrangement Letter or Contract with appropriate terms • Contract change orders • Project work plans • Engagement QA partner review documentation • Project memoranda related to client discussions of issues/ problems and resolution	

AABU Policy Statement
No. 760

Exhibit A
September 30, 1999

Service Line	Type of Material	Retention Period
	• Supporting schedules, simulations, models, or other documentation that underlie final recommendations made or end products delivered • Client satisfaction documentation and survey forms	Six years (b)
TLBA – Tax and Business Advisory	Central File, including all Working Papers	Six Years (f)
	Income Tax Returns	Six Years (f)
	Tax Basis Studies	Permanently (e)
	Earnings and Profits Studies	Permanently (e)
	Estate Planning Studies	Permanently (e)
	Estate and Gift Tax Returns	Permanently (e)
	Office Copies of Attest Reports, including Third-Party Tax Opinions and Reports on Prospective Financial Information	Permanently (e)
	Continuing Tax Files (including all documents that have continuing importance)	Permanently (e)

Service Line	Type of Material	Retention Period
TLBA – Legal	Central File, Including Working Papers	Customs and practices of legal profession in each country. The policy should be determined by the Head of Legal Services and approved by the Area Practice Director of Legal Services.
	Office Copy of Report or Other Deliverable (d)	Permanently (e)
BC	Project File Documentation • Risk SMART documentation and risk management action plans • Job Arrangement Letter with appropriate terms and conditions, signed by the client and AA • Contract change orders • Project work plans • Engagement QA partner review documentation • Project status meetings	

Service Line	Type of Material	Retention Period
	• Project memoranda related to client discussions of issues/ problems and resolution • Supporting schedules, electronic simulations or models, and other documentation that underlie final recommendations made or end products delivered • Client satisfaction documentation and survey forms	Six Years (b)
	Office Copy of Final Report or Other Deliverable (d)	Permanently (e)
Complex Claims & Events (Litigation Support)	Project File Documentation, including • Documentation to support that an adequate conflict search was performed • Risk SMART documentation • Job Arrangement Letter with appropriate terms and conditions, signed by the client and AA • Contract change orders • AP-150, including sign-	

Service Line	Type of Material	Retention Period
	off by engagement QA partner • Client satisfaction documentation and survey forms • Retention of specific supporting schedules are required by (i) Class Action Settlement Assistance, (ii) Insurance Insolvency Consulting and (iii) FEHB Settlement Negotiations. Contact the respective service line leader for more information Office Copy of Final Report or Other Deliverable (d)	Six Years (b) Permanently (e)
Federal Government Contracts Consulting	In addition to the guidelines provided for BC, contracts with the U.S. Government require the retention of certain documentation pursuant to Federal guidelines. Contact the Office of Government Services (OGS) for more information.	As directed by OGS

Service Line	Type of Material	Retention Period
Other Service Lines	Central File, including Working Papers Office Copies of Reports (d)	Six years (b) Permanently (e)

THESE NOTES ARE IMPORTANT – PLEASE READ

(a) The client file is a continuously updated file and includes the reports to support the accept/retain decision, ExCEED, Understanding the Business, Assess Client Risk Controls and Determining and Managing Residual Risk Processes. Per Section 2 of AOP, the engagement team must retain certain reports from the client file in the current year workpapers; retention of other reports is optional.

(b) Six years from the date of the financial statements covered by an audit report or supplemental reports, or the date of issue of special reports on prospective financial information, or other deliverables.

(c) The Office/Country Managing Partner, in consultation with the Global Risk Management Group, may choose to extend the period, if appropriate. In no circumstances, however, should the retention period be lessened.

(d) If our arrangement letter with the client includes legal liability limitation language, such letter should be included with the office copy of our report.

(e) As described in Section 4 of AABU Policy Statement No. 760, these items do not need to be retained permanently for lost clients. These items should be

retained for six years after loss of client rather than permanently.

(f) Six years from the year-end of the relevant return unless a longer period is required by local law. However, if a return is under examination or in dispute, the relevant information should not be destroyed until final resolution or settlement.

WORKING PAPER DESTRUCTION MEMO SAMPLE

To: EACH PARTNER AND PRINCIPAL

Subject CLIENT INFORMATION (INCLUDING ELECTRONIC MEDIA) DESTRUCTION

ACTION REQURIED BY _____, 19___

AABU Policy Statement No. 760 which establishes guidelines for the retention, storage and destruction of working papers, requires that certain client documents be destroyed after six years. Therefore, hardcopy and electronic files prior to 19__ will be destroyed this year. This includes files requested to be retained at previous destruction periods. If you are aware of any files that fall before the above years which should not be destroyed, it is your responsibility to inform the Director – Administration of those files by _____, 19__. Working papers to be destroyed include electronic media relating to the destruction period.

Our coordinator of the Files Department has prepared a comprehensive listing of all files planned for destruction this summer. A copy of this listing is available (in some specified location, or possibly attached in smaller offices) for your review.

Exceptions to the destruction process are set forth in Exhibit A to AABU Policy Statement No. 760. Any exceptions to the destruction of information should be decided by the appropriate audit partner, or in the case of lost clients, by the Office/Country Service Category Head.

If you are not certain that the CAFs contain important information of continuing value, such as LIFO base computations, acquisition cost allocations, details of book/tax depreciation and other book/tax differences, etc., it is your responsibility to see that this information is placed in the CAF prior to authorizing destruction of the working papers.

In the Tax, Legal and Business Advisory Division, the materials which pertain to open IRS examinations or pending litigation (and similar matters discussed in Section 4 of AA BU Policy Statement No. 760) should not be destroyed. It is the responsibility of the appropriate partner to inform the Director – Administration of those files which must be retained.

Please review the attached Exhibit A and immediately determine what files, if any should not be destroyed. If you are not sure whether working paper materials fall within the above guidelines, please consult with your Service Category Head, Director – Administration or, in certain instances, with the Managing Partner – Professional Practice Litigation. If you have any other questions about these procedures, please contact the coordinator in the Files Department.

Each partner should complete, sign and date the attached form to signify concurrence with the planned destruction, or to specify those files to be temporarily retained. All forms should be returned to the Director - Administration by or before _____, 19___.

AABU Policy Statement No. 760 Exhibit B September 30, 1999

Your assistance and immediate action concerning this matter is appreciated.

_____

(Office/Country Managing Partner or Service Category Head, as appropriate)

Enclosure: Exhibit A of AA BU Policy Statement No. 760

AABU Policy Statement
No. 760

Exhibit B
September 30, 1999

FILES DESTRUCTION

To: DIRECTOR – ADMINISTRATION

Subject: FILES DESTRUCTION

From: _____

_____ I have read the files destruction memo dated _____ and am not aware of any files that should be retained, based on the file destruction guidelines.

_____ I have read the files destruction memo dated _____ and have listed below the file(s) that should be retained, based on the file destruction guidelines.

_____ _____
Signature Date

Files To Retain:

Client Name	CLIENT CODE	FILE NUM-BER	YEAR(s)	RETENTION REASON

AABU Policy Statement
No. 760

Exhibit C
September 30, 1999

SUMMARY OF ANNUAL DISPOSITION OF FILES
_____1999

FILE NUMBER

_____

YEAR	FILES TO BE DESTROYED	FILES TO BE RETAINED	FILES NOT LOCATED*

Prepared by: _____
FILES DEPARTMENT

Approved by: _____
Director - Administration
or Service Category Head

* Column will normally be blank. Engagement partners should be notified in situations where files are lost, and a memo should be prepared describing the steps taken to find the files.

AABU Policy Statement No. 760 — Exhibit D September 30, 1999

Annual Statement Regarding Destruction of Client Information

To: All Personnel

From: Service Category Head

Subject Destruction of Client Information Under Personal Control.

AABU Policy Statement No. 760 dated _____, 1999, establishes guidelines for destruction of client information both hardcopy and electronic. Each year, we confirm with all our personnel that they have followed the procedures, summarized below, to assure compliance with those guidelines. Please read the procedures below and return this statement to _____ confirming that you have complied with the procedures (for more detail, see Section 4 of the Policy Statement).

1. All personal network areas, ELAN areas; Lotus notes mailboxes and databases, computer hard drives and other electronic storage media under my control has been purged of any data over six years old (diskettes should be destroyed or reformatted using "absolute delete").

2. All files related to client work (except that currently in progress) have been transferred to the network or other appropriate storage

AABU Policy Statement No. 760 — Exhibit D September 30, 1999

location, and has been deleted from media under my personal control; and

3. All extraneous, duplicate or nonessential files and information have been deleted.

4. All Octel messages older than 30 days have been deleted.

_____ _____

Signed Printed Name

Policy Suggestions for Electronic Data Retention

Each office is responsible for developing its own procedures for destroying appropriate electronic data.

Electronic client documents and files can reside in a number of locations, including local office servers, regional servers, engagement site LANs, laptop computers and various portable storage media. Policies and procedures need to be in place and implemented carefully to ensure that all client files are accounted for and properly stored and destroyed according to Firm guidelines. Additionally, your policies should be reviewed with the appropriate Director of Technology to assure they are appropriate. Guidance from the AA AdminBinder should also be considered.

Below is a listing of possible electronic client document and file locations, the impact of their location and recommended policies for proper handling of these files. These policies will need to be somewhat different in each location, based on the

specific environment of that location.

Location	Risk	Recommended Policy
Local Office File Servers	Back up may result in data being maintained for longer periods of time than is appropriate. Data can be stored in multiple locations on the network, which increases risks that data is retained for inappropriately long time periods.	Refer to the AA Admin Binder for appropriate file back up procedures. It is important that only one control copy of files (on j:) be maintained. Files stored on the g: drive on the servers should be purged at the same time the c: drive purging takes place, since g: would contain only personal copies of the data and not necessarily be targeted for archival/retention.

Location	Risk	Recommended Policy
Lotus Notes Servers	Individual mail databases and other Lotus Notes databases, such as AA Online, reside on regional notes servers. These databases should never be the primary storage location for client files and information.	General Lotus Notes servers should be backed up in the same manner as local office network servers. Individuals should remove Lotus Notes mail items that contain client information as quickly as possible.
	DocMan is a Lotus Notes database designed to facilitate the management and storage of client workpapers and other electronic documents prepared in connection with an audit. All DocMan databases are placed on a special regional Notes server separate from all other Firm or local office developed databases. According to DocMan procedures, the current	Once the current year workpapers are archived, these archived tapes must be properly stored and marked for timely destruction in the same manner as local office file servers

Location	Risk	Recommended Policy
	year workpapers will be archived at the conclusion of each engagement. Since the DocMan Notes servers back-ups are handled regionally instead of at the local office of the engagement team, the regional administrator will be responsible for timely client data destruction.	
	Proposal Toolbox is a database that contains "Best Practices" copies of actual proposals that have been submitted. These proposals contain information about potential clients.	Replace the actual names of the companies with "ABC Company" and remove any other descriptions in the proposal documents that would identify the company.
Engagement Site LANs	Engagement Site LANs (ELANs) will use JAZ drives, zip drives or laptop computers (acting	Managers (or seniors) should, at the end of each engagement, retrieve or otherwise

Location	Risk	Recommended Policy
	as servers) for client document storage and back-ups. Duplicate copies or draft copies of these files are frequently left on individual laptop computers and typically not deleted until computers are turned in for reassignment, disposal or lease termination.	make sure that the only electronic files for that engagement are the final copies stored on the ELAN document storage device.
	Since ELANs often "travel" from client location to client location, the same document storage devices (zip drives or JAZ drives) will be used at several different client locations.	Managers (or seniors) should make sure that the floppy, zip or JAZ drive discs that contain the final client electronic files are collected and taken to the local office and filed with the client workpapers at the end of the engagement. Destruction of these discs should be performed following policy guidelines. All discs that

Location	Risk	Recommended Policy
		contain client electronic files that are not final should either be properly destroyed or securely deleted. Backups of permanent ELANs should be marked appropriately with the backup date and properly stored. These backups should be stored in a protected area and destroyed according to AA BU guidelines.
Individual Laptop Computers	Laptop computers can contain client documents in the c\data\client subdirectories. These files can be drafts or duplicates of final copies that exist either on the network server or ELANs and have been backed up to	No client documents should reside on an individual's computer if that individual is connected to a file server or an ELAN on a regular basis. After a client engagement is complete, and proper backups of final

Location	Risk	Recommended Policy
	tape or disc.	client workpapers have been performed, all client documents on a laptop must be deleted using the "absolute delete" utility.
	Archived and replicated copies of Lotus Notes databases reside in the c:\data\notes\ subdirectory. The potential exists for client information to reside in these locally stored databases.	The laptop user should regularly review laptop copies and archives of Lotus Notes databases for document retention/destruction purposes.
	When an individual switches laptops, care must be exercised when moving data from one laptop to another to assure that old client data is not kept.	The local offices should distribute yearly notices to all laptop users to "absolute delete" all client data that are a year or more old.
Word	Word processing	Word processing

Location	Risk	Recommended Policy
Processing Departments	departments may keep copies (both hardcopy and electronic) in addition to other copies that are maintained.	files should be reviewed annually for files that have met the destruction time frame.

GOVERNMENT'S EXHIBIT NT1009

...

Enron

TC Jan + Tim. 10/9/01.

Look-back rule?

Call SEC on no-name basis?

Issue Reiser's report? 20-aggregation method?

If PSG says not technically correct, restates unless SEC agrees.

- Highly probable issue. SEC investig.
- Enforcement PSG agmt, near. probab. will force a restmt. w/o PSG agmt., restmt + probability of charge of culpable C+D in 10(b).
  From subj of SC+D risk + 102(e). Senior people in same position.

[Either PSG or team is right.

If deals of type 2000 – add contemporaneously. This will supercede – incorrectly worded. Here is what we discussed

→ If other memos in 2000 still in draft.

Check our policy re incorrect doc?

(A) Discard + replace w/ 100 dtd.

(B) Dual date.

(C) [illegible]

GOVERNMENT'S EXHIBIT 1012A

To: David B. Duncan@ANDERSEN WO
CC:
BCC:
Date: 10/12/2001 08:56 AM
From: Michael C. Odom
Subject: Document retention policy
Attachments:

More help.

------Forwarded by Michael C. Odom on 10/12/2001 10:55 AM

To: Michael C. Odom@ANDERSEN WO
cc:
Date: 10/12/2001 10:53 AM
From: Nancy A. Temple, Chicago 33 W. Monroe, 50 / 11234
Subject: Document retention policy

Mike-
It might be useful to consider reminding the engagement team of our documentation and retention policy. It will be helpful to make sure that we have complied with the policy. Let me know if you have any questions.

Nancy

http://www.intranet.andersen.com/onefirm.nsf/content/ResourcesFirmwidePoliciesPolicy-ClientInformationOrganization!OpenDocument

GOVERNMENT'S EXHIBIT 1018B

To: David B. Duncan
CC: Michael C. Odom@ANDERSEN WO; Richard Corgel@ANDERSEN WO; Gary B. Goolsby@ANDERSEN WO

BCC:
Date: 10/16/2001 08:39 PM
From: Nancy A. Temple
Subject: Re: Press Release draft
Attachments: ATT8ICIQ; 3rd qtr press release memo.doc

Dave – Here are a few suggested comments for consideration.

- I recommend deleting reference to consultation with the legal group and deleting my name on the memo. Reference to the legal group consultation arguably is a waiver of attorney-client privileged advice and if my name is mentioned it increases the chances that I might be a witness, which I prefer to avoid.

-I suggested deleting some language that might suggest we have concluded the release is misleading.

-In light of the "non-recurring" characterization, the lack of any suggestion that this characterization is not in accordance with GAAP, and the lack of income statements in accordance with GAAP, I will consult further within the legal group as to whether we should do anything more to protect ourselves from potential Section 10A issues.

Nancy

To: Michael C. Odom@ANDERSEN WO, Richard Corgel@ANDERSEN WO, Nancy A. Temple@ANDERSEN WO, Gary B. Goolsby@ANDERSEN WO
cc:
Date: 10/16/2001 05:00 PM
From: David B. Duncan (Mailed by: Shannon D. Adlong)
Subject: Press Release draft

First draft of memo regarding press release discussion for your comments.

Memo

ANDERSEN

[illegible file name footer omitted]

Memo

ANDERSEN

To The Files

Draft

From David B. Duncan

Date October 15, 2001

Subject Enron Press Release Discussions

On Friday evening, October 12, 2001, I received a draft of Enron's anticipated press release regarding third quarter 2001 results which indicated Enron's intentions to record numerous charges against income for the quarter totaling approximately $1 billion on an after-tax basis. The charges were described as "non-recurring" in the draft.

Enron had sometimes used this description in past press releases. In such cases, we had always informed management that, although we understood that press releases were the Company's responsibility, we did not advise the use of "non-recurring" as a description and were concerned it could potentially be misunderstood by investors. We pointed out that such items are, more often than not, included in normal operating earnings in the GAAP financial statements. We also insisted that the Company not use such a description in public filings with which we may have some association (i.e., in 10-Q and 10-K MD&A information). Whether because of our views or otherwise, management has generally described these or

similar items as "Items Impacting Comparability in such public filings".

Because of the magnitude of the anticipated third quarter 2001 charges and because they were being described as "non-recurring" in the draft release, I shared excerpts of the draft with Mike Odom, Rich Corgel and Gary Goolsby of our practice risk management group.
After discussion with the above individuals on Sunday, October 14, I spoke with Rick Causey, Enron's Chief Accounting Officer, about the company's presentation approach. I told Rick that, while we recognized that press releases are solely the Company's responsibility, we had strong concerns that the presentation of the charges as non-recurring could be misconstrued or misunderstood by investors. Our advice was that the Company should consider changing the presentation or should otherwise undertake whatever procedures they might deem necessary, including the involvement of counsel. Rick acknowledged my advice.

On Monday, October 15, 2001, the night before the release, I inquired of Rick what procedures may have been performed. He responded that he had raised the issue internally and that the press release had gone through "normal legal review".

The release was issued early Tuesday, October 16, 2001, with essentially the original presentation.

cc: Mike Odom
Rich Corgel
Gary Goolsby

[illegible file name footer omitted]

Date October 15, 2001
Subject Enron Press Release Discussions
Page 2 of 1

To The Files

Draft

From David B. Duncan

Date October 15, 2001

Subject Enron Press Release Discussions

On Friday evening, October 12, 2001, I received a draft of Enron's anticipated press release regarding third quarter 2001 results which indicated Enron's intentions to record numerous charges against income for the quarter totaling approximately $1 billion on an after-tax basis. The charges were described as "non-recurring" in the draft.

Enron had sometimes used this description in past press releases. In such cases, we had always informed management that, although we understood that press releases were the Company's responsibility, we did not advise the use of "non-recurring" as a description and were concerned it could potentially be misunderstood by investors. We pointed out that such items are, more often than not, included in normal operating earnings in the GAAP financial statements. We also insisted that the Company not use such a description in public filings with which we may have some association (i.e., in 10-Q and 10-K MD&A information). Whether because of our views or otherwise, management has generally described these or

similar items as "Items Impacting Comparability in such public filings".

Because of the magnitude of the anticipated third quarter 2001 charges and because they were being described as "non-recurring" in the draft release, I shared excerpts of the draft with Mike Odom, Rich Corgel and Gary Goolsby of our practice risk management group. and Nancy Temple of our legal group for advice regarding this situation.

After discussion with the above individuals on Sunday, October 14, I spoke with Rick Causey, Enron's Chief Accounting Officer, about the company's presentation approach. I told Rick that, while we recognized that press releases are solely the Company's responsibility, we had strong concerns that the presentation of the charges as non-recurring could be misconstrued or misunderstood by investors. I also informed him that we were aware of enforcement actions undertaken against companies by the SEC in cases where they believe such a presentation was materially misleading. Our advice was that the Company should consider changing the presentation or should otherwise undertake whatever procedures they might deem necessary, including the involvement of counsel, to ensure they did not consider the presentation to be misleading. Rick acknowledged my advice.

On Monday, October 15, 2001, the night before the release, I inquired of Rick what procedures may have been performed. He responded that he had raised the issue internally and that the press release had gone through "normal legal review".

The release was issued early Tuesday, October 16, 2001, with essentially the original presentation.

Date October 15, 2001
Subject Enron Press Release Discussions
Page 3 of 1

cc: Mike Odom
Rich Corgel
Gary Goolsby
Nancy Temple

GOVERNMENT EXHIBIT 1017B

[Seal Omitted]

IN REPLYING
PLEASE QUOTE
MFW-02400

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
FORT WORTH DISTRICT OFFICE
801 CHERRY STREET SUITE 1900
FORT WORTH, TEXAS 76102
PHONE: (817) 978-3821 FAX: (817) 978-2700

October 17, 2001

VIA FACSIMILE [(713) 853-3129] AND OVERNIGHT MAIL

Enron Corp.
Attn.: James V. Derrick, Jr., Executive Vice President and General Counsel
Andrew S. Fastow, Executive Vice President and Chief Financial Officer
1400 Smith Street
Houston, TX 77002-7369

RE: Enron Corp. (MFW-02400)

Dear Sirs:

The Fort Worth District Office of the Securities and Exchange Commission is hereby inquiring into Related Party[1] transactions involving Mr. Andrew S. Fastow,

[1] "Related Party," as used herein, shall mean any and all entities with which Mr. Fastow was affiliated and which were involved in transactions with Enron Corp.; the transactions are to include but not be limited to those referenced in Enron's Form 10-Q for the period ended June 30, 2001, and its May 1, 2001, proxy statement, and the entities are to include but not be limited to LJM2 Co-Investment, L.P., LJM Cayman L.P., and/or the "Partnerships."

Executive Vice. President and Chief Financial Officer of Enron Corp.[2]

In general, we wish to determine the nature and amount of the interests, profits, and losses of Enron and Mr. Fastow in the Related Party transactions. We therefore request that for any and all Related Party transactions, Enron and Mr. Fastow provide the following information or documents:

1. the organizational documents for the Related Parties (for example, articles of incorporation), including documents showing the members, partners (limited and general), shareholders or other investors in the Related Parties.

2. any offering materials used to raise funds for the Related Parties.

3. the documents, if any, setting forth the terms of the Related Party transactions.

4. the documents, if any, terminating the Related Party transactions.

5. the documents, if any, specifying Mr. Fastow's relationship to, responsibilities at, and compensation agreements with, each of the Related Parties.

6. an accounting of the amounts involved in each Related Party transaction, and showing Enron's

[2] Throughout, Enron Corp. or "Enron" means Enron Corp., its subsidiaries, and affiliates.

ultimate profit or loss on the transactions.

7. an accounting of Mr. Fastow's interests in each Related Party transaction, and showing his profits or losses with regard to the individual transactions, and with regard to his relationship as a whole with the Related Parties.

8. if not shown by the documents and accountings requested above, a schedule or other summary showing the dates of key events in each Related Party transaction, including the dates and amounts of any payments between the Related Parties and Enron.

9. a summary of the particular rationale for each Related Party transaction, summarizing Enron's reason for entering into each transaction, including how it expected to profit from each transaction, and what exposure, if any, the transactions created, avoided or hedged for Enron.

10. a summary from Mr. Fastow, explaining the reason the Related Parties entered into each Related Party transaction, including how they expected to profit and what exposures, if any, the transactions created, avoided or hedged for them.

We ask that you provide the requested information and documents no later than November 9, 2001, to Staff Attorney John C. Martin, at the address set forth above for the Fort Worth District Office of the Commission.

The Commission has not determined that the matters hereby under inquiry involve violations of the federal securities laws, and you should not take this inquiry as a reflection upon any person, company or security. You may, however, wish to bring the requests made in this letter

to the attention of your attorney.

Attached for your information and retention is SEC Form 1662 which contains important supplemental information. If you have any questions concerning this matter, you may contact John C. Marlin at (817) 978-6471.

Very truly yours,

Spencer C. Barasch
Associate District Administrator

/s/ John Martin

John C. Martin
Staff Attorney

Enclosures: As noted

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Supplemental Information for Persons Requested to Supply Information Voluntarily or Directed to Supply Information Pursuant to a Commission Subpoena

False Statements and Documents

Section 1001 of Title 18 of the United States Code provides as follows:

> Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined under this title or imprisoned not more than five years, or both.

Testimony

If your testimony is taken, you should be aware of the following:

1. *Record.* Your testimony will be transcribed by a reporter. If you desire to go off the record, please indicate this to the Commission employee taking your testimony, who will determine whether to grant your request. The reporter will not go off the record at your, or your counsel's, direction.

2. *Counsel.* You have the right to be accompanied, represented and advised by counsel of your choice. Your counsel may advise you before, during and after your testimony; question you briefly at the conclusion of your testimony to clarify any of the answers you give during testimony; and make summary notes during your testimony solely for your use. If you are accompanied by counsel, you may consult privately.

If you are not accompanied by counsel, please advise the Commission employee taking your testimony whenever during your testimony you desire to be accompanied. represented and advised by counsel. Your testimony will be adjourned to afford you the opportunity to arrange to do so.

You may be represented by counsel who also represents other persons involved in the Commission's investigation. This multiple representation, however, presents a potential conflict of interest if one client's interests are or may be adverse to another's. If you are represented by counsel who also represents other persons involved in the investigation, the Commission will assume that you and counsel have discussed and resolved all issues concerning possible conflicts of interest. The choice of counsel, and the responsibility for that choice, is yours.

3. *Transcript Availability.* Rule 6 of the Commission's Rules Relating to Investigations, 17 CFR 203.6, states:

> A person who has submitted documentary evidence or testimony in a formal investigative proceeding shall be entitled, upon written request, to procure a copy of his documentary evidence or a transcript of his testimony on payment of the appropriate fees: *Provided, however,* That in a nonpublic formal investigative proceeding the Commission may for good cause deny such request. In any event, any witness, upon proper identification, shall have the right to inspect the official transcript of the

witness' own testimony

If you wish to purchase a copy of the transcript of your testimony, the reporter will provide you with a copy of the appropriate form. Persons requested to supply information voluntarily will be allowed the rights provided by this rule.

4. *Perjury.* Section 1621 of Title 18 of the United States Code provides as follows:

> Whoever . . . having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose. or certify truly .... willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true ... is guilty of perjury and shall, except as otherwise expressly provided by law, be fined under this title or imprisoned not more than five years or both ....

5. *Fifth Amendment and Voluntary Testimony.* Information you give may be used against you in any federal, state, local or foreign administrative. civil or criminal proceeding brought by the Commission or any other agency.

You may refuse, in accordance with the rights guaranteed to you by the Fifth Amendment to the Constitution of the United States, to give any information that may tend to incriminate you or subject you to fine, penalty or forfeiture.

If your testimony is not pursuant to subpoena, your appearance to testify is voluntary, you need not answer any question, and you may leave whenever you wish. Your cooperation is, however, appreciated.

6. *Formal Order Availability.* If the Commission has issued a formal order of investigation, it will be shown to you during your testimony, at your request. If you desire a

copy of the formal order, please make your request in writing.

Submissions and Settlements

Rule 5(c) of the Commission's Rules on Informal and Other Procedures, 17 CFR 202.51c), states:

> Persons who become involved in ... investigations may, on their own initiative, submit a written statement to the Commission setting forth their interests and position in regard to the subject matter of the investigation. Upon request, the staff, in its discretion, may advise such persons of the general nature of the investigation, including the indicated violations as they pertain to them, and the amount of time that may be available for preparing and submitting a statement prior to the presentation of a staff recommendation to the Commission for the commencement of an administrative or injunction proceeding. Submissions by interested persons should be forwarded to the appropriate Division Director, Regional Director, or District Administrator with a copy to the staff members conducting the investigation and should be clearly referenced to the specific investigation to which they relate. In the event a recommendation for the commencement of an enforcement proceeding is presented by the staff, any submissions by interested persons will be forwarded to the Commission in conjunction with the staff memorandum.

The staff of the Commission routinely seeks to introduce submissions made pursuant to Rule 5(c) as evidence in Commission enforcement proceedings, when the staff deems appropriate.

Rule 5(f) of the Commission's Rules on Informal and Other Procedures, 17 CFR 202.5(f), states:

> In the course of the Commission's investigations, civil lawsuits, and administrative proceedings, the staff, with appropriate authorization, may discuss with persons involved the disposition of such matters by consent, by settlement, or in some other manner. It is the policy of the Commission, however, that the disposition of any such matter may not, expressly or impliedly, extend to any criminal charges that have been, or may be, brought against any such person or any recommendation with respect thereto. Accordingly, any person involved in an enforcement matter before the Commission who consents, or agrees to consent, to any judgment or order does so solely for the purpose of resolving the claims against him in that investigative, civil, or administrative matter and not for the purpose of resolving any criminal charges that have been, or might be, brought against him. This policy reflects the fact that neither the Commission nor its staff has the authority or responsibility for instituting, conducting, settling, or otherwise disposing of criminal proceedings. That authority and responsibility are vested in the Attorney General and representatives of the Department of Justice.

Freedom of Information Act

The Freedom of Information Act, 5 U.S.C. 552 (the "FOIA"), generally provides for disclosure of information to the public. Rule 83 of the Commission's Rules on Information and Requests, 17 CFR 200.83, provides a procedure by which a person can make a written request that information submitted to the Commission not be disclosed under the FOIA. That rule states that no determination as to the validity of such a request will be

made until a request for disclosure of the information under the FOIA is received. Accordingly, no response to a request that information not be disclosed under the FOIA is necessary or will be given until a request for disclosure under the FOIA is received. If you desire an acknowledgment of receipt of your written request that information not be disclosed under the FOIA, please provide a duplicate request, together with a stamped, self-addressed envelope.

Authority for Solicitation of Information

Persons Directed to Supply Information Pursuant to Subpoena. The authority for requiring production of information is set forth in the subpoena. Disclosure of the information to the Commission is mandatory, subject to the valid assertion of any legal right or privilege you might have.

Persons Requested to Supply Information Voluntarily. One or more of the following provisions authorizes the Commission to solicit the information requested: Sections 19 and/or 20 of the Securities Act of 1933; Section 21 of the Securities Exchange Act of 1934; Section 321 of the Trust Indenture Act of 1939; Section 42 of the Investment Company Act of 1940; Section 209 of the Investment Advisers Act of 1940; and 17 CFR 202.5. Disclosure of the requested information to the Commission is voluntary on your part.

Effect of Not Supplying Information

Persons Directed to Supply Information Pursuant to Subpoena. If you fail to comply with the subpoena, the Commission may seek a court order requiring you to do so. If such an order is obtained and you thereafter fail to supply the information, you may be subject to civil and/or criminal sanctions for contempt of court. In addition, if the subpoena

was issued pursuant to the Securities Exchange Act of 1934, the Investment Company Act of 1940, and/or the Investment Advisers Act of 1940, and if you, without just cause, fail or refuse to attend and testify, or to answer any lawful inquiry, or to produce books, papers, correspondence, memoranda, and other records in compliance with the subpoena, you may be found guilty of a misdemeanor and fined not more than $ 1,000 or imprisoned for a term of not more than one year, or both.

Persons Requested to Supply Information Voluntarily. There are no direct sanctions and thus no direct effects for failing to provide all or any part of the requested information.

Principal Uses of Information

The Commission's principal purpose in soliciting the information is to gather facts in order to determine whether any person has violated, is violating, or is about to violate any provision of the federal securities laws or rules for which the Commission has enforcement authority, such as rules of securities exchanges and the rules of the Municipal Securities Rulemaking Board. Facts developed may, however, constitute violations of other laws or rules. Information provided may be used in Commission and other agency enforcement proceedings. Unless the Commission or its staff explicitly agrees to the contrary in writing, you should not assume that the Commission or its staff acquiesces in, accedes to, or concurs or agrees with, any position, condition, request, reservation of right, understanding, or any other statement that purports, or may be deemed, to be or to reflect a limitation upon the Commission's receipt, use, disposition, transfer, or retention, in accordance with applicable law, of information provided.

Routine Uses of Information

The Commission often makes its files available to other governmental agencies, particularly United States Attorneys and state prosecutors. There is a likelihood that information supplied by you will be made available to such agencies where appropriate. Whether or not the Commission makes its files available to other governmental agencies is, in general, a confidential matter between the Commission and such other governmental agencies.

Set forth below is a list of the routine uses which may be made of the information furnished.

1. To coordinate law enforcement activities between the SEC and other federal, state, local or foreign law enforcement agencies, securities self-regulatory organizations, and foreign securities authorities.

2. By SEC personnel for purposes of investigating possible violations of, or to conduct investigations authorized by, the federal securities laws.

3. Where there is an indication of a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system *of* records may be referred to the appropriate agency, whether federal, state, or local, a foreign governmental authority or foreign securities authority, or a securities self-regulatory organization charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute or rule, regulation or order issued pursuant thereto.

4. In any proceeding where the federal securities laws are in issue or in which the Commission, or past or present

members of its staff, is a party or otherwise involved in an official capacity.

5. To a federal, state, local or foreign governmental authority or foreign securities authority maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

6. To a federal, state, local or foreign governmental authority or foreign securities authority, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

7. In connection with proceedings by the Commission pursuant to Rule 2(e) of its Rules of Practice, 17 CFR 201.2(e).

8. When considered appropriate, records in this system may be disclosed to a bar association, the American Institute of Certified Public Accountants, a state accountancy board or other federal, state, local or foreign licensing or oversight authority, foreign securities authority, or professional association or self-regulatory authority performing similar functions, for possible disciplinary or other action.

9. In connection with investigations or disciplinary proceedings by a state securities regulatory authority, a

foreign securities authority, or by a self-regulatory organization involving one or more of its members.

10. As a data source for management information for production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained or for related personnel management functions or manpower studies, and to respond to general requests for statistical information (without personal identification of individuals) under the Freedom of Information Act or to locate specific individuals for personnel research or other personnel management functions.

11. In connection with their regulatory and enforcement responsibilities mandated by the federal securities laws (as defined in Section 21(g) of the Securities Exchange Act of 1934, 15 U.S.C. 78u(g)), or state or foreign laws regulating securities or other related matters, records may be disclosed to national securities associations that are registered with the Commission, the Municipal Securities Rulemaking Board, the Securities Investor Protection Corporation, the federal banking authorities, including but not limited to, the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation, state securities regulatory or law enforcement agencies or organizations, or regulatory law enforcement agencies of a foreign government, or foreign securities authority.

12. To any trustee, receiver, master, special counsel, or other individual or entity that is appointed by a court of competent jurisdiction or as a result of an agreement between the parties in connection with litigation or administrative proceedings involving allegations of violations of the federal securities laws (as defined in Section 21(g) of the Securities Exchange Act of 1934, 15 U.S.C. 78u(g)) or the Commission's Rules of Practice, 17

CFR 202.1 *et seq.*, or otherwise, where such trustee, receiver, master, special counsel or other individual or entity is specifically designated to perform particular functions with respect to, or as a result of, the pending action or proceeding or in connection with the administration and enforcement by the Commission of the federal securities laws or the Commission's Rules of Practice.

13. To any persons during the course of any inquiry or investigation conducted by the Commission's staff, or in connection with civil litigation, if the staff has reason to believe that the person to whom the record is disclosed may have further information about the matters related therein, and those matters appeared to be relevant at the time to the subject matter of the inquiry.

14. To any person with whom the Commission contracts to reproduce, by typing, photocopy or other means, any record within this system for use by the Commission and its staff in connection with their official duties or to any person who is utilized by the Commission to perform clerical or stenographic functions relating to the official business of the Commission.

15. Inclusion in reports published by the Commission pursuant to authority granted in the federal securities laws (as defined in Section 21(g) of the Securities Exchange Act of 1934, 15 U.S.C. 78u(g)).

16. To members of advisory committees that are created by the Commission or by the Congress to render advice and recommendations to the Commission or to the Congress, to be used solely in connection with their official designated functions.

17. To any person who is or has agreed to be subject to the Commission's Rules of Conduct, 17 CFR 200.735-1 *et seq.*,

and who assists in the investigation by the Commission of possible violations of federal securities laws (as defined in Section 21(g) of the Securities Exchange Act of 1934, 15 U.S.C. 78u(g)), in the preparation or conduct of enforcement actions brought by the Commission for such violations, or otherwise in connection with the Commission's enforcement or regulatory functions under the federal securities laws.

18. Disclosure may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

19. To respond to inquiries from Members of Congress, the press and the public which relate to specific matters that the Commission has investigated and to matters under the Commission's jurisdiction.

20. To prepare and publish information relating to violations of the federal securities laws as provided in 15 U.S.C. 78u(a), as amended.

21. To respond to subpoenas in any litigation or other proceeding.

22. To a trustee in bankruptcy.

Small Business Owners: The SEC always welcomes comments on how it can better assist small businesses. If you have comments about the SEC's enforcement of the securities laws, please contact the Office of Chief Counsel in the SEC's Division of Enforcement at 202-942-4530 or the SEC's Small Business Ombudsman at 202-942-2950. If you would prefer to comment to someone outside of the SEC, you can contact the Small Business Regulatory Enforcement Ombudsman toll free at 888-REG-FAIR. The Ombudsman's office receives comments from small businesses and annually evaluates federal agency

enforcement activities for their responsiveness to the special needs of small business.

GOVERNMENT'S EXHIBIT NT1029

* * *

BEST AVAILABLE COPY

TC Dan Kalb 10/29/11

If new leadership, full supplanting is [illegible] problem
Additional resources [illegible] being brought to bear
Communicate of
Audit Committee

Don't know re prior FYs.
Press release is huge issue.
Accurate as possible.
Counterparties /

What FYs?

Issues in this year. We're taking a hard look year & quarters. Big diff of prior year issues

Don't know enough to withdraw.
Careful re effective withdrawing

Newspaper v. allegations

Given all of allegs, we don't reaffirm, [illegible] leadership resolves. Certainly haven't withdrawn opinion

Not in a position to talk to you. Not pushed by re ongoing all issues - need time to sort out - not affirming but emphasis on time
[illegible]

What would [illegible] auditors' reaction be?

→ Forensic team – at counsel
will help w/ SEC + Jury.

Timing – very concerned.

Electronic paper files.

Drafting of transactions.

John Stewart explain transactions
Thea? →
Any other than 11 Apr Eff.

• • •

GOVERNMENT'S EXHIBIT 1030A

[Seal Omitted]

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

October 30, 2001

BY FACSIMILE TO (202) 663-6363

William R. McLucas, Esq.
Charles E. Davidow, Esq.
Joseph K. Brenner, Esq.
Wilmer, Cutler & Pickering
2445 M Street, N.W.
Washington, D.C. 20037-1420

Re: *Enron Corp. (HO-9530)*

Dear Messrs. McLucas, Davidow and Brenner:

As discussed yesterday, the staff has serious concerns about the recent revelations regarding limited partnership transactions at Enron. The staff is especially concerned about Enron's apparent unwillingness to provide meaningful disclosure to the investing public about the nature of these transactions and the performance of these partnerships.

Accordingly, we advised you of the information we believe Enron should provide to the public in short order, certainly, no later than Monday, November 5, 2001. This

information, which should be provided in a form that a reasonable investor would find helpful and would understand, falls into the four following categories:

1. An explanation of the LJM and LJM2 limited partnership agreements and activities including an explanation of the relationships between Enron and the partnerships and the business purpose(s) of the relationships. In connection with this, there needs to be a better articulation of the assets and liabilities of the partnerships and the extent to which they were transferred from or payable to Enron then is determinable from the Related Party Transactions footnote in the December 31, 200010-K

2. A similar explanation for any other similar arrangements (with or without related party involvement) including an explanation of Enron's total involvement in similar arrangements.

3. An explanation of all transactions in which Enron officers or directors have an interest similar to Andrew S. Fastow's interests in LJM and LJM2.

4. An explanation of the $1.2 billion charge to shareholder equity including an explanation of why Enron was obliged to buy back common stock and whether, and if so how, the buy back related to hedging activities.

We look forward to Enron's prompt and candid attention to these issues.

Also, as discussed, we plan on meeting with Enron representatives who are in a position to explain these transactions by Monday, November 5, 2001.

Very truly yours,

/s/ Linda Chatman Thomsen

Linda Chatman Thomsen
Associate Director
Division of Enforcement

/s/ Charles D. Niemeier by nct

Charles D. Niemeier
Chief Accountant
Division of Enforcement

GOVERNMENT'S EXHIBIT 928B.2

Andersen
Legal Group

To: Duffy J. Wilson@ANDERSEN WO
cc:
Date: 05/31/2002 06:46 AM
From: Kerry A. Miller, Chicago 33 W. Monroe, 50 / 72072
Subject: Requested Documents 10/13/2001

Confidential – Attorney Work Product

SMARTCOUNSEL
INTRANET SERVER

CLASS C

Link Summary	Events	Tasks	Notes	Discussions
Budgets	Expend ($)	Time Keep	Documents	Settlements DB

Matter Description & Activity

External Client Name	ENRON CORPORATION
Matter Number	AA200 002325
Matter Status:	Open

Description of Circumstance and Contested Services:	(10/12/2001 Nancy A. Temple): Enron is a publicly held client of our Houston office. Beginning in December 1999 and continuing through 2000 Enron entered into a series of complex transactions involving four SPEs (special purpose entities) known as the Raptor entities. The general purpose of the transactions was to hedge risks associated with investments in high tech stocks and private ventures. Enron expects to announce a $1.3 billion charge in the third quarter which includes significant impairment of the notes reflecting the investments in the Raptor entities. We have concluded that the company's accounting method for potential impairment in the first and second quarters 2001 was incorrect and we are informing the client of that advice. We are reviewing acceptable alternatives and determining whether restatement is necessary. The team is consulting with PSG and risk management (Stewart, Ripepi, Neuhausen, Petersen of PSG; Goolsby, Geron, Corgel, Odom of risk management; others consulted are Rieger, Swanson, Goddard, Lowther (concurring reviewer; engagement partners involved are Duncan and Cash). A former Andersen employee at Enron complained about the original accounting for the Raptor entities to the Company's GC and Chairman. The company hired Vinson & Elkins to investigate and we are awaiting the outcome of that investigation before we sign off on the third quarter.

Prior Description of Circumstance and Contested Services:	
Current Matter Status:	
Prior Matter Status:	
Show All	
Last Note for Matter:	No note for this matter
Last Document for Matter:	No document for this matter
Last Event for Matter:	No event for this matter
Last Task for Matter:	No task for this matter
Type of Potential Claim:	Professional Practice – Government/Regulatory Inv.
Potential Cause of Action:	
Service Category: (For Services in Question)	ABA
Engagement Services Period (Date Range)	
From:	
To:	
Tolling Agreement:	
Agreement Period (Date Range)	
From:	
To:	

Legal Fees/Settlements/Loss Exposure

	Fees and Disbursements				
	Budget	Paid	Unpaid	Settlements	Total
Fiscal YTD (US $)	0	0.00	0.00	0.00	0.00
Since inception (U.S. $)		0.00		0.00	0.00
MLE Amount (US $)					
MLE Comments:					

Prior MLE and Comments

Resolution Information

Resolution Date:	
Resolution Description:	
Amount of Settlement (US $):	
Convert to Litigation	No

Internal Legal Team Assignments

Primary Internal Counsel:	Nancy A. Temple – ARTHUR ANDERSEN LEGAL GROUP (Chicago, Illinois)
Supporting Internal Counsel:	Donald Dreyfus – Arthur Andersen Legal Group (Chicago; Illinois)
AA Practice Director:	Odom, Michael C. (New Orleans; Louisiana)
Class C Oversight Partner:	

AA Office and Engagement Team Information

Engagement Partner/MGR(1):	Duncan, David B. (Houston; Texas)
Phone:	1-713-237-2518
Octel:	23-72518
Classification:	Partner / Director
GMU Number:	0080
GMU Name:	Houston
LMU Number:	001
LMU Desc./Service Line	Audit-Energy
Engagement Partner/MGR(2):	Cash, Debra A. (Houston; Texas)
Phone:	1-713-237-2344
Octel:	23-72344

Classification:	Manager
GMU Number:	0080
GMU Name:	Houston
LMU Number:	001
LMU Desc./Service Line	Audit-Energy

Other Contacts:	
Area/Region:	
Market Circle:	
Country:	
Office:	Houston

AA Counsel

Legal Administrative Information

Date Reported to Legal:	09/28/2001
Date Record Established:	10/12/2001
Review for Counsel:	
Date Sent to Warehouse:	
Warehouse Location:	

Insurance Reporting Information

Notified to Insurer:
Claim Date:
Description of Notification
Prior Insurance Notification
Insurance Claim Year:
Insurance Claim Number:
Insurance Reserves Est.

Accounting and Management Reporting Information

G/L Account for LF&S Cost Allocations:
G/L Account for Case Administration Time:
GMU# Bearing Legal Costs:
GMU Name Bearing Legal Costs:

Modification Audit Trail

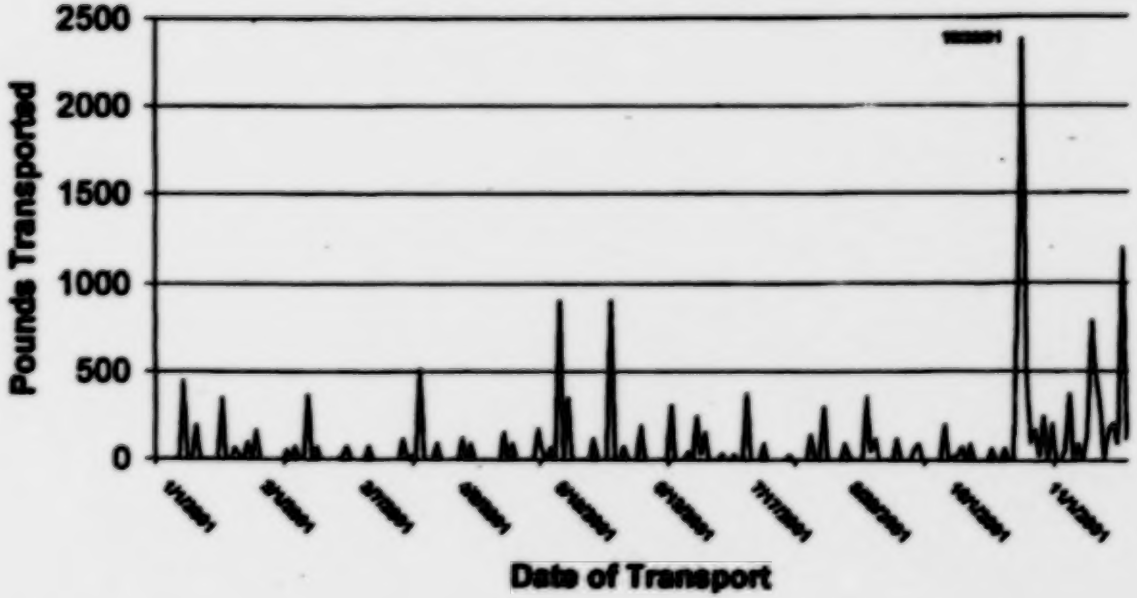
entered by: Nancy A. Temple on 12-Oct-01 at 11:14 AM

©2002 Andersen. All Rights Reserved.
Duffy J. Wilson

GOVERNMENT'S EXHIBIT 180D

JA-133

City Central Courier Deliveries
January 2001 to November 2001



LRC:AW:SB

[CLERK, U.S. DISTRICT COURT]
[SOUTHERN DISTRICT OF TEXAS]
[FILED]
[3/7/02]
[MICHAEL N. MILBY, CLERK]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

----------X CRH-02-121

UNITED STATES OF AMERICA, INDICTMENT

-against

Cr. No. _____
(T. 18, U.S.C., §§ 1512(b) (2) and 3551 et seq.)

ARTHUR ANDERSEN, LLP,

Defendant.

----------X

THE GRAND JURY CHARGES:

I. ANDERSEN AND ENRON

1. ARTHUR ANDERSEN, LLP ("ANDERSEN"), is a partnership that performs, among other things, accounting and consulting services for clients that operate businesses throughout the United States and the world. ANDERSEN is one of the so-called "Big Five" accounting firms in the United States. ANDERSEN has its headquarters in Chicago, Illinois, and maintains offices throughout the world, including in Houston, Texas.

2. Enron Corp. ("Enron") was an Oregon corporation with its principal place of business in Houston,

Texas. For most of 2001, Enron was considered the seventh largest corporation in the United States based on its reported revenues. In the previous ten years, Enron had evolved from a regional natural gas provider to, among other things, a trader of natural gas, electricity and other commodities, with retail operations in energy and other products.

3. For the past 16 years, up until it filed for bankruptcy in December 2001, Enron retained ANDERSEN to be its auditor. Enron was one of ANDERSEN's largest clients worldwide, and became ANDERSEN's largest client in ANDERSEN's Gulf Coast region. ANDERSEN earned tens of millions of dollars from Enron in annual auditing and other fees.

4. ANDERSEN performed both internal and external auditing work for Enron mainly in Houston, Texas. ANDERSEN established within Enron's offices in Houston a work space for the ANDERSEN team that had primary responsibility for performing audit work for Enron. In addition to Houston, ANDERSEN personnel performed work for Enron in, among other locations, Chicago, Illinois, Portland, Oregon, and London, England.

II. THE ANTICIPATION OF LITIGATION AGAINST ENRON AND ANDERSEN

5. In the summer and fall of 2001, a series of significant developments led to ANDERSEN's foreseeing imminent civil litigation against, and government investigations of, Enron and ANDERSEN.

6. On or about October 16, 2001, Enron issued a press release announcing a $618 million net loss for the third quarter of 2001. That same day, but not as part of the press release, Enron announced to analysts that it would reduce shareholder equity by approximately $1.2 billion. The market reacted immediately and the stock price of Enron shares plummeted.

7. The Securities and Exchange Commission ("SEC"), which investigates possible violations of the federal securities laws, opened an inquiry into Enron the very next day, requesting in writing information from Enron.

8. In addition to the negative financial information disclosed by Enron to the public and to analysts on October 16, 2001, ANDERSEN was aware by this time of additional significant facts unknown to the public.

- The approximately $1.2 billion reduction in shareholder equity disclosed to analysts on October 16, 2001, was necessitated by ANDERSEN and Enron having previously improperly categorized hundreds of millions of dollars as an *increase*, rather than a decrease, to Enron shareholder equity.
- The Enron October 16, 2001, press release characterized numerous charges against income for the third quarter as "non-recurring" even though ANDERSEN believed the company did not have a basis for concluding that the charges would in fact be non-recurring. Indeed, ANDERSEN advised Enron against using that term, and documented its objections internally in the event of litigation, but did not report its objections or otherwise take steps to cure the public statement.
- ANDERSEN was put on direct notice of the allegations of Sherron Watkins, a current Enron employee and former ANDERSEN employee, regarding possible fraud and other improprieties at Enron, and in particular, Enron's use of off-balance-sheet "special purpose entities" that enabled the company to camouflage the true financial condition of the company. Watkins had reported her concerns to a partner at

ANDERSEN, who thereafter disseminated them within ANDERSEN, including to the team working on the Enron audit. In addition, the team had received warnings about possible undisclosed side-agreements at Enron.

- The ANDERSEN team handling the Enron audit directly contravened the accounting methodology approved by ANDERSEN's own specialists working in its Professional Standards Group. In opposition to the views of its own experts, the ANDERSEN auditors had advised Enron in the spring of 2001 that it could use a favorable accounting method for its "special purpose entities."
- In 2000, an internal review conducted by senior management within ANDERSEN evaluated the ANDERSEN team assigned to audit Enron and rated the team as only a "2" on a scale of one to five, with five being the highest rating.
- On or about October 9, 2001, correctly anticipating litigation and government investigations, ANDERSEN, which had an internal department of lawyers for routine legal matters, retained an experienced New York law firm to handle future Enron-related litigation.

III. THE WHOLESALE DESTRUCTION OF DOCUMENTS BY ANDERSEN

9. By Friday, October 19, 2001, Enron alerted the ANDERSEN audit team that the SEC had begun an inquiry regarding the Enron "special purpose entities" and the involvement of Enron's Chief Financial Officer. The next morning, an emergency conference call among high-level ANDERSEN management was convened to address the SEC inquiry. During the call, it was decided that documentation that could assist Enron in responding to the

SEC was to be assembled by the ANDERSEN auditors.

10. After spending Monday, October 22, 2001 at Enron, ANDERSEN partners assigned to the Enron engagement team launched on October 23, 2001, a wholesale destruction of documents at ANDERSEN's offices in Houston, Texas. ANDERSEN personnel were called to urgent and mandatory meetings. Instead of being advised to preserve documentation so as to assist Enron and the SEC, ANDERSEN employees on the Enron engagement team were instructed by ANDERSEN partners and others to destroy immediately documentation relating to Enron, and told to work overtime if necessary to accomplish the destruction. During the next few weeks, an unparalleled initiative was undertaken to shred physical documentation and delete computer files. Tons of paper relating to the Enron audit were promptly shredded as part of the orchestrated document destruction. The shredder at the ANDERSEN office at the Enron building was used virtually constantly and, to handle the overload, dozens of large trunks filled with Enron documents were sent to ANDERSEN's main Houston office to be shredded. A systematic effort was also undertaken and carried out to purge the computer hard-drives and E-mail system of Enron-related files.

11. In addition to shredding and deleting documents in Houston, Texas, instructions were given to ANDERSEN personnel working on Enron audit matters in Portland, Oregon, Chicago, Illinois, and London, England, to make sure that Enron documents were destroyed there as well. Indeed, in London, a coordinated effort by ANDERSEN partners and others, similar to the initiative undertaken in Houston, was put into place to destroy Enron-related documents within days of notice of the SEC inquiry. Enron-related documents also were destroyed by ANDERSEN partners in Chicago.

12. On or about November 8, 2001, the SEC served ANDERSEN with the anticipated subpoena relating

to its work for Enron. In response, members of the ANDERSEN team on the Enron audit were alerted finally that there could be "no more shredding" because the firm had been "officially served" for documents.

THE CHARGE: OBSTRUCTION OF JUSTICE

13. On or about and between October 10, 2001, and November 9, 2001, within the Southern District of Texas and elsewhere, including Chicago, Illinois, Portland, Oregon, and London, England, ANDERSEN, through its partners and others, did knowingly, intentionally and corruptly persuade and attempt to persuade other persons, to wit: ANDERSEN employees, with intent to cause and induce such persons to (a) withhold records, documents and other objects from official proceedings, namely: regulatory and criminal proceedings and investigations, and (b) alter, destroy, mutilate and conceal objects with intent to impair the objects' integrity and availability for use in such official proceedings.

(Title 18, United States Code, Sections 1512(b)(2) and 3551 et seq.)

A TRUE BILL

/s/ [Name Illegible]
FOREPERSON

JOSHUA R. HOCHBERG
ACTING UNITED STATES ATTORNEY
SOUTHERN DISTRICT OF TEXAS

LESLIE R. CALDWELL
DIRECTOR, ENRON TASK FORCE

By: /s/ Samuel W. Buell
Samuel W. Buell
Andrew Weissmann
Special Attorneys
Department of Justice

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

[Caption Omitted in Printing]

ANDERSEN'S PROPOSED JURY INSTRUCTIONS

* * *

DEFENDANT'S PROPOSED JURY INSTRUCTION NO. ___

Elements

For you to find Arthur Andersen guilty of the crime charged in the indictment, you must be convinced that the Government has proved each of the following things beyond a reasonable doubt:

First: That Arthur Andersen corruptly persuaded, or attempted to persuade, its employees to alter, destroy, mutilate, or conceal one or more objects; and

Second: That Arthur Andersen acted knowingly and with the specific intent and purpose to impair the objects' integrity or availability for use in a particular federal official proceeding; and

Third: That, at the time, this federal proceeding was ongoing or had been scheduled to be commenced in the future.

All of you must agree on the particular object or objects to have been altered, destroyed, mutilated, or concealed, and in which federal official proceeding or proceedings the object or objects were expected to be used.

Authority: 18 U.S.C. § 1512(b); Fifth Circuit Pattern Jury Instruction 2.68 (adapted); *United States v. Shively*, 927 F.2d 804, 812-13 (5th Cir. 1991) ("[w]ithout at least a circumstantial showing of intent to affect testimony at some particular federal proceeding that is ongoing or is scheduled to be commenced in the future, this statute does not proscribe [defendant's] conduct").

DEFENDANT'S PROPOSED JURY INSTRUCTION NO. ___

"Official Proceeding"

An "official proceeding" is a proceeding before a court, judge, or magistrate judge of the United States or a proceeding before a federal government agency that is authorized by law.

Here, the only official proceedings that may be considered are those charged in the indictment, which include "regulatory and criminal proceedings and investigations." For purposes of this case, a civil lawsuit brought by private litigants is not an official proceeding.

In addition, the official proceeding must be one that is ongoing or has been scheduled to be commenced in the future.

Authority: 18 U.S.C. §1515(a)(1); *United States v. Shively*, 927 F.2d 804, 812-13 (5th Cir. 1991) ("[w]ithout at least a circumstantial showing of intent to affect testimony at some particular federal proceeding that is ongoing or is scheduled to be commenced in the future, this statute does not proscribe [defendant's] conduct"); *United States v. Murphy*, 762 F.2d 1151, 1154 (1st Cir. 1985) (dismissing indictment that failed to specify the "official proceeding" obstructed); *United States v. Royal Caribbean Cruises, Ltd.*, 24 F. Supp.2d 155, 163 (D.P.R. 1997) ("[t]he government must notify the defendants of the specific proceeding which was obstructed.").

DEFENDANT'S PROPOSED JURY INSTRUCTION NO. ___

SEC Inquiry

A formal investigation that has been set in motion by a vote of the Securities and Exchange Commission ("SEC") is an official proceeding. However, an informal inquiry conducted by SEC staff prior to official authorization by the Commission is not an "official proceeding." Thus, if you find that Arthur Andersen intended to impair an object's availability for use only in an informal SEC inquiry, you must find Arthur Andersen not guilty.

Authority: *United States v. Batten*, 226 F. Supp. 492, 493-494 (D.D.C. 1964); 17 C.F.R. § 202.5(a) ("in such preliminary [SEC] investigation no process is issued or testimony compelled").

* * *

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

[Caption Omitted in Printing]

ANDERSEN'S RESPONSE TO THE GOVERNMENT'S *IN LIMINE* MEMORANDUM OF LAW REGARDING EVIDENTIARY ISSUES AND JURY INSTRUCTIONS

* * *

The conclusion that a preliminary inquiry by the SEC is not an "official proceeding" is a sensible one. The SEC launches a vast number of preliminary inquiries, only a small percentage of which turn into enforcement proceedings. These inquiries thus do not trigger the kind of attention or alarm that would justify, for example, suspending a firm's document retention policies. To criminalize document destruction having an alleged nexus only with a preliminary SEC inquiry would thus encroach too severely on the document management practices of companies monitored by the SEC, while making the obstruction of justice statutes apply too broadly in this arena. As a consequence, Andersen's proposed instruction, which indicates that a formal investigation "set in motion by a vote" of the SEC is a "proceeding" but that "an informal inquiry conducted by SEC staff" is not (Andersen instr. at 6), correctly states the law; the Department's proposed instruction, which declares that "all of the steps and stages in the performance by an agency of its governmental functions" is a "proceeding" (DOJ instr. at 34-35), is plainly wrong.

b. The "official proceeding" must be "ongoing or scheduled" at the time of the corrupt persuasion.

In *United States v. Shively*, 927 F.2d 804, 812-13 (5th Cir. 1991), the Fifth Circuit stated that Section 1512 requires "at least a circumstantial showing of intent to affect testimony at *some particular federal proceeding that is ongoing or is scheduled to be commenced in the future.*" (emphasis added). That holding is not dictum, and it is binding on this Court. Accordingly, Andersen is entitled to an instruction reflecting the language in *Shively*.

In *Shively*, the defendants burned down their property to collect insurance proceeds. They made two threats in connection with the subsequent state court action instituted to recover the insurance. Five years after the arson, and two and one-half years after the Shivelys' threats, a grand jury indicted the Shivelys. The government proceeded on the theory that the threats were designed to prevent the potential witness from testifying honestly before any federal grand jury that might later be convened.

The court held that there was an insufficient nexus between the threats and the official proceedings to support a conviction. It stated:

> A defendant can act without knowledge of an official proceeding or its federal nature and, as a result, influence the witness's testimony at that proceeding. The coincidence of this act and result will not suffice, however, for criminal liability to attach under this statute. *Without at least a circumstantial showing of intent to affect testimony at some particular federal proceeding that is ongoing or is scheduled to be commenced in the future, this statute does not proscribe his conduct.*

927 F.2d at 812-13 (emphasis added). Thus, under *Shively*, it

is insufficient for the government to show that the defendant intended to affect some hypothetical future federal proceeding. The government must demonstrate instead that the defendant's acts were consciously directed toward a *specific* official proceeding that, if not yet commenced, is scheduled to begin in the future. The government's invitation to the Court to disregard this holding—which turns, in almost so many words, on the proposition that the Fifth Circuit did not mean what it expressly said (*see* DOJ Br. at 49)—is simply insubstantial.

Contrary to the government's argument, *Shively*'s construction of Section 1512 is wholly consistent with the statutory requirement that "an official proceeding need not be pending or about to be instituted at the time of the offense." 18 U.S.C. 1512(e)(1). *Shively* simply requires that the proceeding, although not pending, be *scheduled and concretely planned*. *See United States v. Royal Caribbean Cruises, Ltd.*, 24 F.Supp.2d 155, 163 (D.P.R. 1997) ("[t]he government must notify the defendants of the specific proceeding which was obstructed."). The standard set forth in *Shively* is a perfectly reasonable construction of a statute that criminalizes conduct *because of its connection* to a federal official proceeding. *Cf. United States v. Aguilar*, 515 U.S. 593, 599 (1995) (construing 18 U.S.C. § 1503) ("We do not believe that uttering false statements to an investigating agent ... who might or might not testify before a grand jury is sufficient to make out a violation of the catchall provision of § 1503").

4. The "collective knowledge" doctrine has no place in this case.

a. There cannot be "collective specific intent."

The government is plainly wrong in seeking an instruction on "collective knowledge." *See* DOJ Br. at 52-52; DOJ instr. at 32-34. In fact, the collective knowledge doctrine simply has no application at all to cases involving specific intent offenses. The courts are *unanimous* in

holding that, even if the knowledge of corporate employees may be

> aggregated so that a corporate defendant is considered to have acquired the collective knowledge of its employees, ... *specific intent cannot be aggregated similarly*. Thus, in order for the verdict against [a corporate defendant] to stand, there must be evidence ... that at least one agent of [the defendant corporation] had the specific intent [required by the statute].

United States v. LBS Bank-New York, Inc., 757 F. Supp. 496, 501 n.7 (E.D. Pa. 1990) (citation omitted) (emphasis added.)[11] That is dispositive here because–as we have explained above an d as the

* * *

[11] Accord, *Saba v. Compagnie Nationale Air France*, 78 F.3d 664, 670 n.6 (D.C. Cir. 1996) (acts of employees "cannot ... be combined to create a wrongful corporate intent."); *Nordstrom, Inc. v. Chubb & Son, Inc.*, 54 F.3d 1424, 1435-36 (9th Cir. 1995) (rejecting securities fraud claim against corporation: "[T]here is no case law supporting an independent 'collective scienter' theory."); *Lind v. Jones, Lang LaSalle Americas, Inc.*, 135 F. Supp. 2d 616, 622 n.6 (E.D. Pa. 2001) ("Although knowledge possessed by employees is aggregated ..., specific intent cannot be aggregated similarly.") *First Equity Corp. of Florida v. Standard & Poor's Corp.*, 690 F. Supp. 256, 260 (S.D. N.Y. 1988) (in fraud case, "[a] corporation can be held to have a particular state of mind only when that state of mind is possessed by a single individual"), *aff'd* 869 F.2d 175 (2d Cir. 1989); *Louisiana Power and Light Co. v. United Gas Pipe Line Co.*, 642 F. Supp. 781, 803 (E.D. La. 1986) (in RICO case, "to find [the corporate defendant] liable for fraud, I must find that a[n] ... employee had the specific intent required by 18 U.S.C. § 1341 and § 1343.")

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA	:	Criminal Action
	:	No. H-02-121
vs.	:	Houston, Texas
	:	
ARTHUR ANDERSEN, LLP,	:	May 14, 2002
Defendant	:	8:12 a.m.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE MELINDA HARMON
AND A JURY

Volume VII

* * *

[Testimony of David Duncan]

[1794]

* * *

Q. Now, during the days just before the earnings release, did the numbers start showing whether there would be less of an impairment issue than if the aggregation test was not applied and a restatement was called for under the old method?

A. Yes. **[1795]**

Q. And what did the numbers start showing?

A. Well, that the residual impact, if you will, was looking like it was not going to be material, but that was Enron's determination to make at that time until we were completely finished with all of our audit work.

Q. And who had the conversation from Arthur

Andersen to communicate the firm's position with respect to Enron?

A. I did.

Q. And who did you communicate that to?

A. I communicated that to Richard Causey, the chief accounting officer of Enron.

Q. When did you do that?

A. We were talking through the days leading up to earnings release, but we had a concluding conversation about that very early in the morning of earnings release.

Q. And when you say "very early in the morning of the earnings release," why don't we first pinpoint what day was the earnings release.

A. I believe the earnings release was on October 16th.

* * *

[1846]

* * *

Q. Prior to October 16th, 2001, did you think that the billion-dollar error was going to require restatement? **[1847]**

A. Prior to October 16th?

Q. Yes.

A. No, I did not.

Q. Why not?

A. We had discussed with the company their assertion that the error was not material enough to warrant a restatement.

Q. And what was your view about whether the billion dollars was material or not?

A. I was agreeable to the company's assertions that I believe that their assertions had merit.

Q. Why?

A. Why?

Q. Why? What was your reasoning?

A. Why, I'm sorry.

The company's assertions were, although it was a large amount, as a percentage of its balance sheet, particularly the equity balance, it was not a large percentage -- my recollection is it was approximately 8 1/2 -- and, also, that it did not significantly impact some of their more monitored ratios with respect to their balance sheets, including their debt-to-equity ratio, and had no impact on their financial covenants with their lenders.

Q. Did you think that that was an aggressive position for ENRON to take?

A. Yes, it was aggressive. [1848]

Q. And did you think your view was an aggressive position?

A. Yes, it was aggressive.

Q. And, in general, Mr. Duncan, if you had to characterize your own views as a monitor/auditor at Arthur Andersen, would you say you were aggressive?

A. Yes.

Q. Were there people at the firm who disagreed with you?

A. Often, yes.

Q. And did your own views change after October 16th, 2001 with respect to whether this needed to be -- would require restatement?

A. Yes.

Q. What changed after October 16th, 2001?

A. The more qualitative arguments around the lack of materiality of this issue did not -- no longer seemed to have merit after all of the negative press and the obvious attention on the issue by the analysts and the media.

Q. I'm sorry. I missed the last thing you said?

A. And the media.

Q. When you said the qualitative issues, what do you mean by that?

A. Well, typically, when you are evaluating any type of an error for a correction, you look at it in terms of

materiality, and you look at it both on a quantitative basis, which is purely a mathematical percent, if you will, of the [1849] balance or account that it is impacting; and you also look at it qualitatively to see if, notwithstanding the quantitative assessment, that, from a qualitative standpoint, would it significantly impact how readers viewed the financial statements.

Q. And did you change your views after October 16th, your own personal views about this issue?

A. Sometime after October 16th, yes, I did.

Q. Was that communicated to the company?

A. Yes, it was.

Q. Who did you communicate it to?

A. Rick Causey.

Q. Did you discuss the issue of the billion-dollar error with John Riley?

A. Yes.

Q. Do you remember about when you discussed it with Mr. Riley?

A. The week following the October 16th press release.

Q. And what did you say to him, and what did he say to you?

A. The discussion with Mr. Riley was in the context of a meeting with a number of other people where the issue was being discussed. And Mr. Riley was making the observations that, because the error was above the 5 percent threshold, that the SEC would view that as not passing any kind of a quantitative test. So you would be relying on the [1850] quantitative arguments. And, in this case, at the time we were discussing it, which was a week later, given the magnitude of the comments and attention, as I mentioned earlier, it was obvious to those of us in the group that the qualitative arguments no longer had merit. And Mr. Riley was expressing that view.

Q. And, at that point, did you agree with him?

A. Yes, I did.

* * *

[1879]

* * *

Q. After the analyst call, what did you and your colleagues, Ms. Cash, Mr. Bauer and Mr. Willard, talk about?

A. We discussed the call briefly. We discussed Deb's compilation of the LJM transaction listing. And she was soliciting all of our input into its completeness and who had worked on various transactions. And we discussed requests that I had gotten to make sure that we were in compliance with the document retention policy.

Q. What was said about that topic?

A. I mentioned that I had received a request to ensure that [1880] the engagement team was in compliance with the policy. Everybody acknowledged that that seemed to be a good thing to do. We talked about -- I suggested that everybody should contact their appropriate staff and make sure we're in compliance with the policy.

And someone suggested that they thought we should have a meeting to go over the recent events at ENRON and also to discuss becoming in compliance with the policy and have copies of the policy available for people that might not be familiar with it.

Q. You said someone suggested this in the larger meeting?

A. Yes.

Q. Do you remember who?

A. I believe it was Roger Willard.

Q. You also mentioned that you gotten a request on that.

A. Yes.

Q. When did you get a request on it?

A. I had gotten a request on October 12th.

Q. And how did you get that request?

A. They -- an e-mail that was forwarded to me from Mike Odom, the original e-mail being from Nancy Temple.

Q. And what was the -- in the e-mail?

A. What was in the e-mail was a statement to the effect that it would be a -- it would be good to ensure that the engagement team is in compliance with the document retention [1881] policy.

Q. Now, you said that in the discussion between you and Mr. Bauer, Mr. Willard and Ms. Cash, I believe you said something like it was agreed that would be a good thing to do.

A. Yes.

Q. Why?

A. Well, it appeared to be a very appropriate thing to do, given the R circumstances surrounding all the events at ENRON at the time.

Q. What circumstances?

A. The losses recorded in the quarter, the escalating news reports, the lawsuits and the potential for further lawsuits and the SEC inquiry.

Q. What did you understand when you brought up the topic of compliance with the document policy? What did you understand people would do to get in compliance with the policy?

A. I viewed the policy really having two main themes: One is the compilation of the final work paper product and the filing of that in the central files to where the working papers were preserved. And then the other broad aspect was the destruction of all other materials that didn't make it into the final work papers, extraneous notes and documentation and other things.

* * *

[1885]

* * *

Q. Now, the initial e-mail from Ms. Temple to Mr. Odom is October 12th; is that correct?

A. Yes.

Q. And if you could just read it, what it is that she says?

A. "Mike, it might be useful to consider reminding the engagement team of our document and retention policy. It will be helpful to make sure that we have complied with the policy. Let me know if you have any questions."

MR. HARDIN: Excuse me. I'm sorry. I think the witness misread. Can I ask him to reread the word "documentation"? I think it calls to document retention policy.

THE WITNESS: Okay.

MR. HARDIN: If you could read that sentence again.

THE COURT: All right.

THE WITNESS: Sure. "It might be useful to [1886] consider reminding the engagement team of our documentation and retention policy. It will be helpful the make sure that we have complied with the policy. Let me know if you have any questions."

BY MR. WEISSMANN:

Q. And the -- and then it's signed "Nancy"?

A. Yes.

Q. And there's a link there to the document policy?

A. Yes.

Q. Now, in that language, where it says "document retention

policy" and the whole initial e-mail --

A. Yes.

Q. -- is there any reference there to ENRON or the ENRON engagement team?

A. No, there is not.

Q. And Mr. Odom forwarded that to you; correct?

A. Yes.

Q. And he wrote "more help"?

A. Yes.

Q. How did you take that "more help" language?

A. As a sarcastic remark by Mr. Odom that we were getting a lot of advice on things to do around this time frame. And I took it as a pseudosarcastic remark by him of more things to do.

Q. Now, this e-mail is on October 12th. You said that you [1887] spoke about this with your colleagues right after the analyst call on the 23rd; is that correct?

A. Yes.

Q. What's the reason that you waited from the 12th to the 23rd?

A. The 12th was a Friday, the Friday before the earnings release, and we had a number of issues that were being managed through earnings release and afterward, and the opportunity and the -- by the time that certain time had passed, the recollection of complying with the policy didn't occur to me again until that point in time.

Q. Is there anything that made it more important to you on the 23rd than it was on the 12th?

A. Yes.

Q. What?

A. The continued escalating events surrounding ENRON.

Q. And what was escalating?

A. The negative press after the earnings release, the filing of lawsuits and the SEC inquiry.

Q. Now, you mentioned that people discussed right after the analyst call about this would be a good thing to do.

Why did you think it would be a good thing for the engagement team to be in compliance with the policy?

A. To protect the interests of the firm; to not have a lot of extraneous material that weren't -- materials that weren't [1888] a part of the final audit work papers laying around

for others to discover.

Q. And when you say "protect the interests of the firm," how would it protect the interests of the firm?

A. Well, in the event of civil litigation or investigation, things that were not a part of the final conclusions or work papers could be taken out of context, blown out of proportion, any number of reasons of how they might be used or misused against the firm.

Q. Did you have a discussion with Ms. Temple about that very topic?

A. Over time? At this particular date?

Q. No. At any point.

A. Yes. Over time, we had several references to that type of an item or an idea.

* * *

[1903]

* * *

Q. Now, Mr. Duncan, when you received the e-mail from Mr. Odom forwarding Nancy Temple's e-mail, did you personally have any concern about civil litigation?

MR. HARDIN: Excuse me. Ask him what his concerns were and I have no objection; but I object to the leading question.

THE COURT: Overruled.

BY MR. WEISSMANN:

A. Yes.

Q. Did you have any concerns about SEC involvement?

MR. HARDIN: Excuse me. I respectfully request an open-ended question what his concerns were not leading him as to specific.

THE COURT: Objection is overruled.

BY MR. WEISSMANN: [1904]

Q. You may answer the question.

A. Would you repeat it, please?

Q. Did you have any concerns about SEC involvement?

A. Yes.

Q. Why? And that's why with respect to both of those civil suits or SEC involvement.

A. We had been addressing these significant issues relative to the Raptors, both the third quarter earnings issue, the balance sheet issue. There was client – I'm sorry – there was the employee assertion issue.

Q. When you say "the employee assertion issue" what are you referring to?

A. Sherron Watkins' allegations. All of those things were significant events. ENRON was fixing to announce a quarter when it was taking over a billion dollars in losses. That was a significant event. All of those events caused a period of heightened awareness where we had a substantial amount of consultation going on. And, you know, certainly the threat of potential civil litigation or SEC questions about any or all of these issues were on our mind.

Q. Did you, in the beginning of October, know one way or the other whether ENRON would need to restate its earnings?

A. In early October? I'm sorry. What was the time frame?

Q. In the early October?

A. No, I didn't know they would have to restate their [1905] earnings.

Q. Was that a possibility?

A. Well, we had – we were considering the balance sheet error, but we had not concluded that it would cause a restatement.

Q. And how about the Raptor aggregation issue?

A. Same thing: That was an issue that could possibly result in restatement; but we had not concluded that it would cause a restatement yet at that time.

Q. And had you concluded that it wouldn't?

A. We had not concluded that it would not.

Q. Is that the issue that, until October 16th, there was no disclosure on in terms of Arthur Andersen?

A. That's correct.

Q. What was your understanding when there's a restatement about whether lawsuits followed?

A. My understanding would be that that would be an expectation after a restatement.

Q. And how about the SEC looking into the reasons for the restatement?

A. Same expectation.

* * *

[1909]

* * *

Q. In October of 2001, did you understand what the law required?

A. I did not.

Q. Did you think at the time that you were committing a federal crime? In other words, your conduct and your intent made you guilty?

A. I did not. I thought this was all entirely appropriate until when I received a subpoena.

* * *

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA	:	Criminal Action
	:	No. H-02-121
vs.	:	Houston, Texas
	:	
ARTHUR ANDERSEN, LLP,	:	May 15, 2002
Defendant	:	9:10 a.m.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE MELINDA HARMON
AND A JURY

Volume VIII

* * *

[Testimony of David Duncan]

[2076]

* * *

Q. And so when we talk about what you were thinking in October of 19 – I mean, excuse me, of 2001, would it be a fair statement that your view was it was perfectly appropriate to discard extraneous matters because you had neither been sued nor served with a subpoena?

A. That is correct.

* * *

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA	:	Criminal Action
	:	No. H-02-121
vs.	:	Houston, Texas
	:	
ARTHUR ANDERSEN, LLP,	:	May 16, 2002
Defendant	:	9:10 a.m.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE MELINDA HARMON
AND A JURY

Volume IX

* * *

[Testimony of David Duncan]

[2480]

BY MR. HARDIN:

Q. When is the first time you remember thinking that the SEC -- the SEC might want some of your documents?

A. I think the first time over this time frame that I remember thinking the SEC might want some of our documents was probably in the late September time frame.

Q. Who did you say that to during that time frame?

A. At that time frame, we had the balance sheet error which was going to be adjusted in connection with the third quarter. And, also, we had been asked by ENRON what -- what our recommendations were with respect to their activity -- their -- their courses of activity with respect to the Raptor entities. And they concluded in late September to buy out of the Raptor entities, which was going to result

in a very significant charge to income.

And during that time, I believe that -- well, I know that I thought there was a possibility that the SEC would look into these issues and perhaps want to look at some of our documentation.

* * *

[2481]

* * *

Q. So you -- your memory is you thought of those terms before October 17th or before you were notified on [2482] October 19th about the SEC having an informal inquiry of ENRON?

A. Of the possibility that the SEC may want to look into these matters and then perhaps look at our documents?

Q. Yes, sir.

A. Yes. I thought of that as a possibility.

Q. Okay. Now, when you thought that was a possibility, were you're thinking it was a possibility during the time that y'all were discovering -- discussing how to document these issues?

A. Yes.

Q. And during the conversations you had about how about how to document them, were you thinking, We need to make sure we have the complete picture here in case the SEC wants to look at this one day?

A. Yes. That was what the large part of the exercise was about, yes.

Q. So when you were thinking about the SEC may want to see these documents one day, is it a fair statement you were thinking in terms of let's make sure we have this fully documented so it is there in case they want to see it?

A. Yes. I believe that the documents would entail the work paper documents which we were working on to make

sure they were complete.

Q. Okay. And so during the period of time, did others [2483] express the concern that they also wanted to make sure that these documents fully revealed what y'all were talking about?

A. Yes.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA	:	Criminal Action
	:	No. H-02-121
vs.	:	Houston, Texas
	:	
ARTHUR ANDERSEN, LLP,	:	May 17, 2002
Defendant	:	8:45 a.m.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE MELINDA HARMON
AND A JURY

Volume X

* * *

[Testimony of David Duncan]

[2712]

* * *

Q. When do you believe -- when do you remember or what is your best memory of when you, yourself, either deleted or discarded any files of your own? Can you walk us through how you went about that?

A. Again, I don't recall a specific date. I know that it was something I had on my mind since I had the meeting, that I should, you know, go through my desk files and also my e-mails, which would have been the two sources of files that I had maintained.

Q. You would have had hard copy and you would have had e-mails; right?

A. From hard copy and some e-mails.

Q. Okay.

A. And, as I recall, there was a time I had a break and did it. And I don't recall exactly what day that was. And I took some time and had Ms. Adlong come in and went through my desk files and gave her some things that I thought were appropriate to discard.

Q. And what did you pick to discard?

A. I don't recall everything that I did, but I went through my files and various memos that were duplicative or old or research materials I thought were no longer relevant. I [2713] recall that there was a number of drafts of old financial statements that I had retained, still had copies of, that I gave her. And possibly some other items. I don't, again, recall everything that I might have given her.

Q. You basically gave her extraneous things to discard, didn't you?

A. I gave her things that I thought were extraneous, yes.

Q. And did you use the same standard as what you deleted from your e-mails?

A. I did go through my e-mails, I don't think at the same time. I think at some other time or maybe multiple times, and again, the same process: deleted things that I thought were no longer useful. I did make an attempt to clean out my e-mails fairly thoroughly when I did go through this process, as I recall.

Q. Had you ever done this before?

A. I had certainly gone through my e-mails and cleaned out my e-mail box before on periodic occasions. I don't recall, other than in the process of moving or some action that required me to clean out my office or just a lack-of-space type of issue, that I ever made a conscientious effort to go, go through my office with the thought of the document retention policy.

Q. And, as a matter of fact, over a period of time, you had accumulated a good matter of material, hadn't you? [2714]

A. That's all relative. Maybe not as much as others might have that I knew, and more than some I knew.

Q. All right. Would you tell the jury, was it about -- just about 20 files that you gave Ms. Adlong? Does that sound about right?

A. I don't know the number. I think I gave her -- you know, best I can recall, a foot or a couple of feet of documents.

Q. Can you just sort of take your hand and use the counter in front of you and sort of demonstrate to the jury about the height of what you gave her?

A. Well, again, a foot to a couple of feet of documents. I would say this (indicating).

Q. Okay. Where did you get those documents?

A. From my office. Desk files in my office.

Q. In various places; right?

A. Yes.

Q. You didn't give her any work files to be destroyed, though, did you?

A. Work papers?

Q. Work papers.

A. No, I did not.

Q. And work papers were not something you were -- that was something you were trying to make sure everybody got complete and full; right? [2715]

A. Yes, I was.

Q. And there was no intent and no action on deleting any work papers or destroying any work papers, was it?

A. Not things that I thought were work papers, no.

Q. In fact, this whole -- when this whole matter became an issue around first week in January or so, whenever,

Mr. Duncan, you became aware of everyone's concern about this, isn't it true to this day you don't know of any work papers that were ever destroyed by people who worked for you at Arthur Andersen?

MR. WEISSMANN: Objection.

THE COURT: Sustained.

BY MR. HARDIN:

Q. Do you know of any work papers that were ever destroyed? I'm asking what you know of. Do you know of any work papers that were destroyed by anybody in this -- getting in compliance with the document retention policy?

A. I do not know of any work papers that were destroyed.

Q. And you never asked anybody to destroy work papers, did you?

A. I never asked anyone to destroy work papers.

Q. In fact, you asked them to make sure they were preserved and complete, didn't you?

A. I worked with people to make sure that the files were complete, yes.

* * *

[2724]

* * *

Q. Okay. Do you remember any of the other things that you reviewed and gave to Ms. Adlong to get rid of or that you deleted from your e-mail?

A. I mentioned some categories earlier when we were talking about hard-copy documents.

Q. What were those categories?

A. Some old financial statement drafts.

Q. All right. What else?

A. Repetitive memos.

Q. Okay.

A. Meeting agendas that --

Q. Media?

A. Meeting agendas.

Q. All right. I'm sorry. What else?

A. I don't recall further.

* * *

[2725]

* * *

Q. Did you discard anything having to do with the Raptor discussions and disagreements between you and PSG?

A. I don't recall.

Q. Did you discard anything having to do with the contra equity?

A. I don't recall.

Q. In fact, you preserved some documents concerning that, didn't you?

A. We certainly were preserving the final memos on that. I don't recall if I deleted any correspondence related to either of those issues.

* * *

[2766]

* * *

BY MR. HARDIN:

Q. Isn't it true that there are no facts or conduct that you intended to keep from the SEC in October and November of 2001?

A. I'm not sure I understand the "facts or conduct." I'm not sure I understand.

Q. Were there any facts or transactions that you, as an accountant, participated in or that you were familiar with on behalf of your company that you were trying to keep from the SEC in October or November of 2001?

A. Again, any facts, I'd have to answer that yes, if you

include "facts" broadly.

Q. What do you mean by it?

A. Well, I know that I destroyed, myself, documents, that would not be available to third parties, including the SEC.

Q. I understand that, sir. And I understand you to be saying documents. But what I'm asking you is: Was there any information that you wanted to keep from the SEC?

A. Any information that I set out to target to keep from the SEC?

Q. Yes, sir.

A. Again, I'd have to say those documents that I destroyed, the information on those, I knew was not going to be [2767] available for the SEC.

Q. Let's take that step-by-step.

That's not quite accurate, is it sir, in this sense -- let me ask you --

MR. WEISSMANN: Objection as to form.

THE COURT: Sustained.

BY MR. HARDIN:

Q. Let's take it step-by-step.

What information in any documents that you destroyed did you have the intent to keep from the SEC?

A. I'm having a hard time with the question in that I don't recall all the information in any of the documents I destroyed. But I'm reluctant to say that no information in the documents I destroyed did I intend to keep away from the SEC, because I knew all of the information in any of the documents I destroyed would not be available for the SEC.

* * *

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA	:	Criminal Action
	:	No. H-02-121
vs.	:	Houston, Texas
	:	
ARTHUR ANDERSEN, LLP,	:	May 22, 2002
Defendant	:	9:06 a.m.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE MELINDA HARMON
AND A JURY

Volume XIII

* * *

[Testimony of David Stulb]

[3666]

* * *

Q. Now, when we went off on discussing the Vinson & Elkins report, you were telling us about your receipt of it from Mr. Duncan. And I believe was that in his office?

A. It was.

Q. And what else happened in his office besides getting the Vinson & Elkins report? [3667]

A. Having conversations, discussing the VE report, and he also mentions to me -- and I had learned this the day before -- that a partner that was not on the ENRON account, had also received a call from Sherron Watkins that where Ms. Watkins essentially reiterated what she had put in writing to ENRON. He said, "Here's a document, an e-

mail that was forwarded by this fellow." As he pulled it out, he said something to the effect, "Another smoking gun. We don't need this," and that he was going to remove the top page. And I stopped him from doing that.

Q. And when you say he did that, who are you referring to?

A. David Duncan.

Q. And was this on a top piece of paper?

A. It was a – it was an internal Andersen e-mail with an attachment, so this was the cover to the attachments.

Q. And what is it that he you saw him doing?

A. Again, as I indicated, he was reading this and used words "another smoking gun. We don't need this." And it appeared that he was going to be removing the top page from the body of the overall document.

Q. And what did you do when you saw that?

A. I said, "Dave, I'm not sure if you had any discussions, but you really need to keep all of this information because this is – there's a strong likelihood that we'll be subject to litigation and the SEC, Justice Department and other [3668] bodies may be interested in this type of information." And he said, "Fine."

Q. Did you specifically mention the SEC and the Justice Department?

A. I believe I did.

Q. And he said, "Fine"?

A. Yes.

Q. Based on what happened in his office, did you call anyone?

A. I did. As I indicated earlier, I took the copy of the V and E report, Brian Loughman, Brian Seibrey and I read it and got their conclusions and decided that I would call John Geron, who I trusted and knew that this was one of the areas that he would be interested in. I pulled John out of a fairly, what I would call, an urgent meeting he was a little grumpy, and said, "What are you calling for?"

And I said, "John, I don't mean to bother you,

but, quickly, have you read the V and E report?"

And he said, "No."

And I said, "Well, you ought to take 10 minutes. It's a very short report." And I said, "At least in my viewing and those are the guys it's a white-wash.

And he said, "Okay."

I also said also that Dave Duncan needs some guidance on document retention. And he said, Call Nancy [3669] Temple. She has responsibility for that area," and hung up.

Q. Now, you said you pulled him out of an urgent meeting; is that correct?

A. That's what I was told. I tried to reach him, and I told the secretary that I wanted to speak with him. And she had to pull him out of a meeting.

Q. Did you consider it – what you were going to communicate to him important?

A. Yes.

Q. And you communicated to him your views and the views of BIFS with respect to the Vinson & Elkins report?

A. Again, I didn't go into detail. It was probably a 90-second conversation. I just said, you know, again, "Have you read the report? If you haven't, you know, it's well worth your time, because" it's," my words "I think problematical problem for us.

Q. And what did he say about whether he had read it or not?

A. He said that he had not, and he gave me the impression that he would look into it.

Q. And was this the same day that you made this phone call?

A. That was probably 40 minutes after, you know, my meeting with David Duncan.

Q. So that Wednesday, the 31st?

A. Yes.

Q. Now, you said also that you said to him that Mr. Duncan [3670] needs, I think your words were, "guidance";

is that correct?

A. Yes.

Q. And what was the guidance that you said he needed?

A. Guidance in document retention.

Q. Why?

A. Because I was concerned that if he was, you know, going to remove this document, that maybe he had not had any definitive conversations relative to the type of discovery motions that we could potentially be subject to. And I had, I think, probably a five-minute conversation trying to help -- he had the deer-in-the-headlight syndrome. Again, I've been in many situations where I've been asked to go into an environment where somebody that does not have the type of training or has not worked with lawyers on a regular basis they just don't know. And it was my impression at the time that Dave was doing something that he didn't understand the ramifications. And I walked him through what this would be like and suggested that he get some guidance himself from, you know, either Odom or Temple or whomever. And he said, "Fine."

Q. You thought he needed legal advice because he hadn't dealt with this situation?

A. Yes, I did.

MR. HARDIN: Excuse me, Judge. He didn't say that, and that's an awful a lot of leading. He can ask him [3671] what kind of advice he gave. The witness has told him, and I object to leading.

THE COURT: Overruled.

BY MR. WEISSMANN:

Q. You can answer.

A. Can you repeat the question, please?

Q. I believe my question was you thought he needed legal advice?

A. I believe he needed internal legal advice. Yes.

Q. And internal, could that come, that internal advice, from Andersen's internal counsel?

A. That's the norm in my experience at the firm.

Q. Now, you said that you had concerns because of what you thought he was appearing to remove the page that said "smoking gun."

What was your view on whether someone should be getting rid of that kind of document at this time?

A. I obviously stopped him because I was concerned that, you know, that type of documentation be retained. Obviously, it took me a day to get the V and E report. And I subsequently learned that there was only one copy of the report and Dave had it. So I wanted to make sure -- that's why we made three copies, you know, one for each of us; that there was -- this document would be available to the working group. [3672]

Q. And what was your view of whether it would be appropriate at this time, on the 31st of October, to be getting rid of documents relating to ENRON?

A. I think it would be, at least in my experience, inappropriate to be getting rid of documents at that time.

Q. Why would it be inappropriate?

A. Well, I think that clearly there was an informal SEC inquiry. The company had been named in several strike lawsuits by Milberg, Weiss, which is probably the most aggressive strike law firm in the United States. And based on -- if Dave Duncan and others were correct and Chewco was blown, we were probably dealing with illegal acts and, as relayed to me as a firm, have disclosure obligations relative to that. Or the company would have disclosure obligations.

Q. And would there also be accounting issues?

A. Yes.

Q. Now, you mentioned that -- I believe you said Mr. Geron referred you to Ms. Temple; correct?

A. He did.

Q. And did he say why Ms. Temple?

A. He said she was responsible for that area.

Q. And when you say "that area," what are you referring to?

A. I mean, we -- again, my experience with the firm, in most of these situations, there's a lawyer from our legal department that's assigned to a working group like this that [3673] has responsibility and having the privilege for Andersen and also in providing guidance to partners or employees relative to what our obligations are, given whatever the facts are.

Nancy, who I had not worked with before, and again subsequently learned was fairly new to the firm, was that person. So when John indicated, "Call Nancy Temple," it was a very normal comment in that, you know, Nancy will be working with us and can help Dave Duncan deal with this issue.

Q. And the fact that you had seen Ms. Temple the day before at the large meeting that you attended with Mr. Loughman and Mr. Sibrey^ ??

A. I did. It was the first time I had met Nancy.

Q. And that was here in Houston correct?

A. It was.

Q. So she had come from Chicago to Houston?

A. Yes.

Q. Did you follow up as Mr. Geron suggested and call Ms. Temple?

A. I eventually -- I think I left voice mail for her on the internal Octel system. We have an internal Octel system, and, also, we had a contact list of cell phones. And I asked her to give me a call urgently. And I think she reached me, you know, at some point shortly after the Geron call. And we have a conversation that's similar to that that I had with [3674] John Geron.

Q. Tell the jury about it. What did you say to her?

A. I started off saying that "John asked me to give you a call. Had you read -- have you read the V and E report, Nancy?"

And I think she said, No, but she was aware of the conclusions. And I said that "This is going to be a problematical problem. If you haven't read it, you ought to

read it." We talked a little bit about some of the issues relative to Vinson & Elkins' independence and was she aware that Max Hendricks, also a relationship partner, was involved with setting up some of the SPEs from a legal structural perspective?

We talked a little bit about, you know, what role BIFS could do, you know, in assisting the firm to build a fraud argument, i.e., that we were misled. I think I closed out Nancy, "By the way, John asked me to tell you that David Duncan needs some guidance on document retention."

And she said, "Fine. I'll take care of it," and ended the conversation.

Q. And do you know one way or the other whether she took care of it?

A. Do I know now or did I know at the time?

Q. Did you know at the time?

A. I assumed that she was going to follow up. I don't know [3675] whether she called Dave Duncan directly.

Q. And what did you understand -- what did you understand from your conversation you wanted her to do?

MR. HARDIN: What he understood he wanted her to do is irrelevant. The question is what he did.

MR. WEISSMANN: I can rephrase it.

THE COURT: All right.

BY MR. WEISSMANN:

Q. What do you want her to do?

MR. HARDIN: Excuse me. I thought that was what was just sustained.

MR. WEISSMANN: That was rephrased.

THE COURT: No. He rephrased it. What did this witness want Nancy Temple to do?

MR. HARDIN: And my only point, that's irrelevant.

THE COURT: Overruled.

MR. HARDIN: Thank you.

BY MR. WEISSMANN:

Q. You can answer the question.

In your conversation with Ms. Temple, what did you want her to do?

A. Provide guidance in document retention.

Q. And when you say "provide guidance," did you think it was a good time for Mr. Duncan or anyone in Houston to be destroying documents relating to ENRON? **[3676]**

A. No.

* * *

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA	:	Criminal Action
	:	No. H-02-121
vs.	:	Houston, Texas
	:	
ARTHUR ANDERSEN, LLP,	:	May 23, 2002
Defendant	:	8:04 a.m.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE MELINDA HARMON
AND A JURY

Volume XIV

* * *

[Testimony of David Stulb]

[3817]

* * *

BY MR. HARDIN:

Q. Mr. Stulb, I would like to go back now, if I can, to this conversation on Wednesday morning that you had with Mr. Duncan to see if you can put it into context and what you remember and what you observed at the time, okay?

First, if you would, describe for me in your **[3818]** own words just the sequence of events, how Mr. Duncan acted, how you acted, and what the event was.

A. Dave either finds me or his secretary finds me from a conference that we were sitting in. I asked for the V&E report. We walk over to his office. He walks behind his desk and either pulls this manila folder from either the

credenza from behind his desk or the desk, walks over, opens it up, opens the manila folder up, pulls out the V&E report. On top of the V&E report are some handwritten notes that he removes. I asked him what they are. He said notes from his meeting with Vinson & Elkins and Enron.

Q. Are they -- can you tell me -- let me just stop you there. These handwritten notes, were they on a sticky or were they on a full sheet of paper or what?

A. It was on a white legal piece of paper. It was not a yellow sticky.

Q. He told you they were what?

A. His notes from a meeting he had at Enron with Vinson & Elkins to deal with the Watkins' allegations.

Q. Did you look at those notes at all?

A. Very briefly.

Q. But he showed them to you?

A. He did.

Q. Did you see anything of interest in the notes one way or the other to you? [3819]

A. No.

Q. Then what did he do?

A. He gave me the V&E report. We talk about the V&E report, have a conversation; and we segue into the Hecker memo. He has it in his hand. He's reading it as I'm reading it; and as, I think, we're both reading it, he is looking at the document and in what appears to be reading "Another smoking gun. We don't need this."

Q. And when he --

MR. HARDIN: Let's see, if we can, put the memo back up again.

810, please.

Thank you, sir.

BY MR. HARDIN:

Q. All right. If I can -- if you'll just pretend you're David Duncan and do it the way he did it. Are you looking at this e-mail at the time of the conversation you're talking about?

A. We were both looking at it.

Q. Is he holding it in his hand or do you have it or what?

A. He's holding it in his hand.

Q. Is either one of you reading it out loud, the e-mail?

A. I think he's looking at this, I think, refreshing his memory. He hasn't seen it in a while, and I think he focuses on reading "Another smoking gun" or words to that effect, [3820] Mr. Hardin. I mean, I don't precisely remember, you know, exactly everything that took place; but words to the effect were -- he's reading from the document, "Another smoking gun. We don't need this."

Q. All right. Now, it says, "Here's my draft memo for your review for smoking guns that you can't extinguish."

Do you recall whether he read the second sentence, "I tried to include only the perspectives or so"?

A. The only thing I recall him saying from reading the document were words to the effect "Another smoking gun." You know, "We don't need this."

Q. Now, do you recall saying this in the grand jury: "Dave found the document and he said words to the effect," quote, "'We don't need this,' and the title of the e-mail was 'Another smoking gun,' and he started to remove it, and I stopped him"? Do you recall saying that?

A. I do.

Q. All right, sir. Now, that, of course, doesn't have him saying, "Another smoking gun we don't need." It doesn't put those two phrases together, does it?

MR. WEISSMANN: Objection.

THE COURT: Overruled.

BY MR. HARDIN:

Q. It doesn't put those two phrases together in that version? [3821]

A. It doesn't. If I may clear it up, Mr. Hardin.

Q. I wish you would. Please.

A. I saw this document when I was -- this cover page and this e-mail --

Q. Okay.

A. -- and have not seen the cover page again until yesterday. The documents that were provided to me over the last 60 days only included the body of the Hecker memo, if you will.

Q. Okay.

A. So, yesterday was the first time I saw that phrase since I read it with Mr. Duncan whenever that date was, on the 31st.

Q. All right, sir. Now, did you -- what significance did you attach -- let me ask you this: Did he try to remove this e-mail from the document?

A. It looked like he was trying to pull the cover sheet off, yes, sir.

Q. By the staple or what?

A. It was stapled.

Q. Okay. And what did you say to him?

A. "Dave, you need" --

MR. WEISSMANN: Objection. Asked and answered.

THE COURT: Sustained.

MR. HARDIN: Asked by them. [3822]

MR. WEISSMANN: Objection. Asked and answered.

THE COURT: Sustained.

BY MR. HARDIN:

Q. What did you take him to mean? Did you think he was trying to get rid of something?

A. Yes, sir.

Q. What was your reaction? What did you believe?

MR. WEISSMANN: Objection.

THE COURT: I'm going to ask you to rephrase that.

BY MR. HARDIN:

Q. All right. Do I recall correctly you saying to the jury yesterday that he acted like somebody who didn't think he was doing anything wrong?

A. Yes, sir.

Q. And was that your impression, that he was naive about this?

A. I think he was naive, yes, sir.

Q. Did you think he was naively about to take an e-mail on top of a substantive document and put that e-mail aside or throw it away?

A. Yes, sir.

Q. Did you get the impression that he thought that was okay and there was nothing wrong with it?

A. I'm not sure what the impression was. I was concerned that he was going to do something with the document that [3823] would later put the firm in harm's way, if you will, and I stopped him.

Q. All right. You thought that that was something that you didn't think was a good idea, right?

A. Yes, sir.

Q. And you thought he was about to use bad judgment -- innocent bad judgment, isn't it true, and discard a document that you didn't think should be discarded?

MR. WEISSMANN: Objection.

THE COURT: Sustained.

BY MR. HARDIN:

Q. Did you believe he was using innocent bad judgment?

MR. WEISSMANN: Objection.

THE COURT: Sustained.

MR. HARDIN: What is the objection to that?

THE COURT: Please move on.

MR. HARDIN: I'm sorry, Judge.

THE COURT: If you want to know, come upstairs. Come upstairs? Come up here.

MR. HARDIN: I take it back. I take it back.

Can I, at least, ask counsel for a basis of the objection?

THE COURT: Not now. Please continue.

BY MR. HARDIN:

Q. Now, you told him that potentially there might be [3824] litigation and there might be discovery down the line,

did you not?

A. Yes, sir.

Q. You used the phrase, did you not, that he looked like a deer caught in the headlights?

A. I did.

Q. What did you mean by that?

A. Very often when we have been involved with situations involving similar issues and you conduct, you know, preliminary interviews of audit partners that have not been subject to litigation or not subject to significant scrutiny, you know, often professionals will make bad judgment or innocuous and the role of a risk management group or lawyers or folks like ourself is to give them best practices as to what they can expect.

And you know, Dave's actions were not uncommon, in my experience, when somebody had the pressure that he had. I think it would be fair to say that the firm's leadership was looking at what he was doing and what he had done. He clearly, you know, was under pressure, had tension and all the things that would come with that.

And again, you know, I didn't focus on, you know, his state of mind of what he was doing at that time. I saw him conduct an act that, again, you know, if I was to benchmark it, you know -- that's why I used the phrase deer [3825] in the headlights type of situation.

Q. And what you observed was common with what, did I understand you to just say, other circumstances you had seen similarly where innocuous bad judgment was used?

A. Yes.

MR. WEISSMANN: Objection. Asked and answered.

THE COURT: Sustained.

MR. HARDIN: I'm just making sure that --

BY MR. HARDIN:

Q. And I believe the answer was yes; is that right?

MR. WEISSMANN: Objection.

MR. HARDIN: Thank you.

THE COURT: Sustained.

BY MR. HARDIN:

Q. What was his reaction when you told him that was not a good idea as to what you thought he was about to do?

A. He said, "Fine."

Q. Did he say anything to you at the time about having just seven days before had a meeting with people in which he had asked them to get in compliance with the document retention policy?

A. No, he didn't.

Q. Did he say anything to you in that conversation, "Well, oh, I've asked people to get rid of extraneous material or people are getting" -- not have asked but "People are getting [3826] rid of extraneous material right now all over this engagement team"? Did he say anything to you about that?

A. No, Mr. Hardin. If I understood that he was doing anything like that, I mean, I would have, you know, obviously, had taken a different response.

Q. And said don't do it?

A. Don't do it.

Q. Because people may misunderstand later, right?

A. Clearly, yes.

Q. All right. Now, did you have any indication from any of the other people -- senior people at Arthur Andersen during any of these conversations -- now you're into the 31st, I believe, in Houston -- that they had been made aware that Mr. Duncan had done that?

A. If I understand the question, did anybody else know that Dave Duncan was getting rid of documents pre the 31st?

Q. No, sir. I didn't say that Dave Duncan was getting rid of documents. What I asked was did you have in any of these conversations any indication from any of these other people -- let me back up. You would agree that these conversations about what to do about the Enron matter were being conducted at the highest level of Arthur

Andersen? Would you agree?

A. It was.

Q. And in any of these conversations you had been in with these other people, was there anything ever said that [3827] indicated any of them were aware of a meeting he had had back on the 23rd asking people to get in compliance with the document retention policy?

A. No, sir.

Q. During the entire time you were in Houston before you left around 1:00 on the 31st, did anybody in your presence at the highest level ever, including Nancy Temple, ever say or discuss anything about the document retention policy?

A. There was no discussion on either the calls or during my short visit to Houston about document retention.

Q. All right. And any conversations or talk that indicated any of them were aware of Mr. Duncan's view?

MR. WEISSMANN: Objection. Asked and answered.

THE COURT: Sustained.

BY MR. HARDIN:

Q. Now, when you had this conversation with him about it, tell me best you can remember what you said to him about getting guidance on document retention. What did you say exactly?

A. I simply said that -- words to the effect that "Enron had already been named in an action and that all of this documentation, particularly, in the file would be subject to future discovery and that" -- words to the effect -- "Government organizations would probably be interested in these documents." [3828]

Q. Did you say that? You never said that really, have you, about governmental institutions?

MR. WEISSMANN: Objection.

BY MR. HARDIN:

Q. Can you recall any time you've ever said that?

A. I think I said to him the SEC and potentially the

Justice Department.

Q. Do you recall ever saying it -- did you say that to the grand jury?

A. Mr. Hardin, I don't reflect back as to what I said. I've been interviewed a number of different times.

Q. Yes, sir.

A. And words to the effect were that I told Dave he should keep these documents because they would be subject to discovery, and I think I indicated that the SEC and other government bodies, potentially, the Justice Department may be interested in that.

Q. Can you -- did you tell the Government that during your interviews with them? I'm not suggesting you did. I'm asking if you ever said that before?

A. I think I probably have, sir, yes.

Q. Do you recall talking to them in terms of -- do you recall whenever you've mentioned that before and to whom, about governmental agencies? That's the only thing I'm asking. [3829]

A. I believe I mentioned it at the first interview I had.

Q. So that should be in the February 26th interview?

A. If that's what the date of the 302 is.

Q. Let's assume we can all agree that you were interviewed on the 26th. And haven't you always said before, Mr. Stulb, that you told them that these documents like this would be subject to -- potentially to litigation in the future?

No. I want to apologize to you. I just found it in your grand jury testimony. You're right. See if you remember saying this. "I said, basically, 'Dave, basically, you know, we're going to be subject to discovery, potential litigation, potential government inquiries and you really need to see -- get some guidance on document retention.'" Is that, basically, what you remember saying?

A. That accurately reflects what I said.

Q. What did you mean by "get some instruction on document retention"?

A. Means get direction from our risk management function as to what you should do with all these documents; and in my experience, if you get direction from the risk management function at Andersen, they're going to give you very specific directions as to what you should do.

Q. Okay. Who all did you tell him that he might check with?

A. I think I used the names Geron, Odom, and Temple. [3830]

Q. Okay. Did you make a preference for any one of those?

A. No, I did not.

Q. All right. Did you suggest what he should ask them at all?

A. No, I did not.

Q. All right. And how would you describe his response?

A. He said, "Fine."

Q. Did he appear appreciative?

A. Yes.

Q. Did he appear to resent it?

A. No.

Q. Did he appear concerned about it?

A. No.

Q. Did he ever give you any evidence that day that he thought he had done anything wrong?

A. No, sir.

Q. All right. And did you walk away thinking he was naive?

A. I walked away thinking he was naive, yes.

Q. And one of the things you thought he was naive about, was it not, was after you read the Vinson, Elkins report?

A. I was very concerned -- if you will, I mean, I was more concerned on the V&E report and the position that the firm was in than I was about the action relevant to the smoking gun document, if you will.

Q. The e-mail page -- have you since become aware that

he [3831] not only retained one copy but several copies of that e-mail?

MR. WEISSMANN: Objection.

THE COURT: Sustained.

BY MR. HARDIN:

Q. Would it make you feel better if you know that he took your advice?

MR. WEISSMANN: Objection.

THE COURT: Sustained.

BY MR. HARDIN:

Q. After you left, he could have gotten rid of that e-mail if he had wanted, couldn't he?

A. He could have but it would have been recovered if it was on our system.

* * *

[3834]

* * *

BY MR. HARDIN:

Q. Mr. Stulb, e-mails are kind of like gerbils, aren't they, they just keep going to different, different people [3835] when they're being forwarded?

A. I'm not sure what gerbils do; but if you mean that e-mails can be forwarded on --

Q. I'm not -- go ahead.

A. E-mails can be forwarded on by individuals who receive them, the answer is yes.

Q. You might have an e-mail that ends up going to just about everybody and his brother, right?

A. It's possible.

Q. If you wanted to make sure the information in that e-mail was not available to anyone, you would have to trace each one of those little trails, wouldn't you?

A. Yes, sir.

Q. And in today's modern world, would you agree that it has become impossible to completely eliminate e-mails?

A. I think impossible is probably an overstatement, but it's very difficult.

Q. Have you ever seen it done?

MR. WEISSMANN: Objection.

THE COURT: Sustained.

BY MR. HARDIN:

Q. Now, in this particular case, for instance, on the e-mail, the e-mail would be on -- right there on the e-mail portion. It's kept in two different places on the person's own computer, isn't it? Don't they have a box and --[3836]

MR. WEISSMANN: Objection, Your Honor.

THE COURT: Sustained.

BY MR. HARDIN:

Q. Now, when you read the V&E report, did you -- did you -- I think you told Mr. Weissmann you considered it a white wash; is that right?

A. I did.

Q. And you expressed that opinion very openly to others?

A. I expressed it -- I don't think openly would be accurate. I expressed it to John Geron; at his direction to a lawyer in-house.

Q. Okay. And you believed, did you not, that Mr. Duncan, in your opinion, was naive in connection with this as well as that -- other matters, right?

MR. WEISSMANN: Objection. Asked and answered.

THE COURT: Sustained.

BY MR. HARDIN:

Q. And then after you had read the report, about what time that day -- how long did it take you to read it, by the way?

A. I skimmed it when I'm having this conversation with Dave in, you know, roughly five minutes and then sat down with Brian and Rick, you know, shortly thereafter and

probably took ten to 15 minutes in reading the full report.

Q. Okay. What happened, by the way, with the e-mail and the Hecker memo after you read them? [3837]

A. Dave kept it in the file and what he did with it after that I have no idea.

Q. You gave it back to him?

A. I never took it.

Q. You read it over his shoulder?

A. Yeah.

Q. Or side by side?

A. Yeah.

Q. I got you. And then on the -- when you got through reading the Vinson & Elkins report, did you keep a copy or did you just give it back to him?

A. I took the copy, gave it to Rick, instructed Rick to make three copies, and return the original back to either Dave or Dave's secretary.

Q. All right, sir. Now, about what time that morning did you finish reading it?

A. I don't know. Sometime after 10:00.

Q. Okay. Now, did you do anything else in connection with the case that day before you left on a 1:00 o'clock flight?

A. I had the conversation with John Geron.

Q. Which conversation was that?

A. After reading the report in more detail and asking for Rick and Brian's views as to what they thought about the report, I called John Geron, pulled him out of a meeting. He was short, said "What do you want?" I said, "John, have you [3838] read the V&E report?" He goes, "No." I said, "Well, it's well worth your time. It's a short read and it's very problematical." And I said, "Basically, it's a white wash and it's going to be problematical." And he said, "Fine." I said, "Also, Dave Duncan needs some guidance on document retention." He said, "Call Nancy Temple. Nancy is focusing on this issue or area," if you will.

Q. All right. And so, did you do that?

A. I --

Q. Did you talk to Nancy Temple?

A. I did.

Q. Excuse me. Was she still in Houston at the time you talked to her?

A. I believe she was.

Q. Where were you when you called her?

A. In a small conference room behind Dave Duncan's office.

Q. Did you call her before you left Houston?

A. I did.

Q. Did you consider it a matter of urgency at that time or just something that you thought somebody ought to follow through on?

A. I considered the V&E report a matter of emergency and the document retention as, you know, a follow on to that.

Q. All right. But I'm asking did you consider – him receiving some kind of instruction about document retention, **[3839]** did you consider that an emergency or just something that ought to be followed up on?

A. I considered that something that needed to be followed up on.

Q. All right. And when you called Nancy Temple, what did you say to her and did she tell you where she was when you talked to her?

A. No, she did not tell me where she was.

Q. Okay. What did you say to her?

A. Essentially repeated what I told John Geron, had she read the V&E report. I went into what –

Q. What did she say, had she?

A. I think she was said she was aware of the V&E report and it was unclear to me whether she had actually read it.

Q. Okay.

A. And I simply said – I had more time, if you will. Geron was pressed, wanted to get back into his meeting. Nancy was not pressed, and I think I expressed some of my

concerns why the V&E report was problematical. I think we talked a little bit about, you know, what our potential scope would be.

I said that unless there really was any need for me to hang around – I was unclear whether I was going to be able to meet with Rick Causey. And then we closed off with a meeting – with a call simply saying, "John told me to **[3840]** tell you that Dave Duncan needs some guidance on document retention." And she said, Fine, she would give him a call.

Q. Okay. Now, did you say to her – did you repeat the story that you told the jury about the e-mail incident or did you just tell her in a general sense he needs some guidance on document retention?

A. The smoking gun? I did not repeat that to either John or Nancy.

Q. You didn't tell them what incident had made you think he needed guidance?

A. No, I did not.

* * *

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

[Caption Omitted in Printing]

ANDERSEN'S REBUTTAL TO THE GOVERNMENT'S REPLY MEMORANDUM OF LAW REGARDING JURY INSTRUCTIONS

* * *

SEC inquiry, prior to Commission approval, of an audit client's "related party" transactions. For example, in *United States v. Senffer*, 280 F.3d 755, 760 (7th Cir. 2002), the defendant had obstructed an SEC *lawsuit* seeking to freeze the defendant's assets. In *United States v. Browning*, 572 F.2d 720 (10th Cir. 1978), the "District Director of Customs conducted an initial or preliminary evaluation proceeding that was a prelude to a criminal investigation" (*id.* at 723-724) and then, during that investigation, the defendant "counseled, advised and suggested that [a] Belgian corporation ... give misleading, incomplete, and manufactured answers to inquiries of the United States Customs Service" (*id.* at 721). And in *United States v. Leo*, 941 F.2d 181, 199 (3rd Cir. 1991), the Defense Contract Audit Agency was conducting an extensive on-site audit of defendant's cost and pricing data—an activity that, in light of the DCAA's "particular mission," was fairly characterized as a "proceeding." In each instance, therefore, the defendant clearly was aware that the agency had initiated an inquiry into its conduct and took action that directly obstructed such inquiry. The same cannot be said here.

2. Ongoing or scheduled.

The government also asks the Court to reject Andersen's proposed instruction, based on *United States v. Shively*, 927 F.2d 804 (5th Cir. 1991), that the official proceeding must be "ongoing or ... scheduled to be commenced in the future." This argument baldly asks the Court to disregard binding Fifth Circuit authority. It should be rejected.

The government's only argument—the last refuge of the desperate lawyer—is that *Shively* should, for unexplained reasons, be read to establish a rule *only* "for the facts of that case." DOJ Reply Br. 18. But *Shively* did nothing of the kind. The key language of the decision is phrased quite generally, as follows:

> A defendant can act without knowledge of an official proceeding or its federal nature and, as a result, influence the witness's testimony at that proceeding. The coincidence of this act and result will not suffice, however, for criminal liability to attach under this statute. Without at least a circumstantial showing of intent to affect testimony at some particular federal proceeding that is ongoing or is scheduled to commenced in the future, this statute does not proscribe his conduct.

927 F.2d at 812-813. There is no basis for construing this general statement of the law as having application only to the facts of that case. In deed, the Fifth Circuit would no doubt have described the applicable standard far differently had it intended to refute only the specific contention in that case that "efforts to intimidate a witness in a private state court civil suit violated section 1512" when "a federal grand jury proceeding was not commenced until years later." DOJ Reply Br. 8.

In fact, the Fifth Court in *Shively* articulated a perfectly reasonable construction of Section 1512, which this

Court is bound to follow. The court of appeals recognized that some nexus to a particular official proceeding that is either existent or specifically planned is needed to give "adequate notice to potential violators" of what conduct is proscribed. *Reeves*, 752 F.2d at 999. This case, even more than *Shively*, demonstrates the need for a clear and tangible nexus to a particular official proceeding. Without such a well-defined nexus, the line between innocuous file clean-up and criminal obstruction would be hopelessly murky.

D. Collective Knowledge

In addition, the government is plainly wrong in continuing to seek a collective knowledge instruction in this case. At the outset, we note that the government is engaging in wishful thinking—and misleading thinking at that—when it purports to quote our initial brief for the proposition that "Andersen agrees" that a collective knowledge instruction *ever* is appropriate. In fact, the government's quotation omits both the lead-in and the conclusion of our statement: we actually said that, "even if" knowledge ever may be aggregated, it would be inappropriate to do so in the

* * *

DEFENDANT'S REVISED PROPOSED JURY INSTRUCTION NO. 1

Intent to Influence Official Proceedings

An act is done with the intent to impair an object's integrity or availability for use in an official proceeding only if it is carried out with the specific purpose of making that object unavailable for use in a particular official proceeding

[that is ongoing or has been scheduled to commence in the future].[7]

If you find Arthur Andersen persuaded its employees to destroy documents, but that it did so solely for a purpose or purposes other than making those documents unavailable for use in an official proceeding, such as implementing the firm's document retention policy, then you must find Arthur Andersen not guilty. In other words, even if you find that Arthur Andersen persuaded its employees to destroy documents with the knowledge that the documents destroyed would thus become unavailable to an official proceeding, you must find Arthur Andersen not guilty unless you also find beyond a reasonable doubt that Arthur Andersen's specific purpose was to make those documents unavailable for use in a particular official proceeding.

Authority: 18 U.S.C. § 1512(b); *United States v. Shively*, 927 F.2d 804, 812-13 (5th Cir. 1991) ("[w]ithout at least a circumstantial showing of intent to affect testimony at some particular federal proceeding that is ongoing or is scheduled to be commenced in the future, this statute does not proscribe [defendant's] conduct"); *United States v. Kellington*, 217 F.3d 1084 1098 (9th Cir. 2000) (Section 1512(b)(2)(B) is "a specific intent crime"); *United States v. Gabriel*, 125 F.2d 89, 105 (2d Cir. 1997) (if the jury had concluded that the defendant's intention was to interfere with a corporate internal investigation, "it would have been

---

[7] Andersen contends that the bracketed language is required by *Shively*, *supra*. However, in the event the Court rejects our position that the official proceeding must be ongoing or scheduled, it should still give our intent instruction with the bracketed language omitted.

compelled" to acquit the defendant); *United States v. Aguilar*, 515 U.S. 593, 599 (1995) (construing 18 U.S.C. § 1503) ("If the defendant lacks knowledge that his actions are likely to affect the judicial proceeding, he lacks the requisite intent to obstruct.").

* * *

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA	:	Criminal Action
	:	No. H-02-121
vs.	:	Houston, Texas
	:	
ARTHUR ANDERSEN, LLP,	:	June 3, 2002
Defendant	:	9:12 a.m.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE MELINDA HARMON
AND A JURY

Volume XXII

* * *

[Testimony of John M. Riley]

[5900]

* * *

Q. At some time during this trip, did you have a conversation with Mr. Duncan about shredding?

A. Yes, I did.

Q. Do you recall when that was?

A. I recall that it was midday on Friday, the 26th. **[5901]**

Q. And how did that conversation come up?

A. The conversation came up because I – on Thursday, the 25th, I had been using a partner's office that in the suite of offices there. But that office was not available on Friday, the 26th, so I was put into a conference room across the hall from Mr. Duncan's office.

During the day, I kept hearing a high-pitched noise coming from -- through the wall in the back of the conference room that I was in. So I walked out of the office at one point in time. Mr. Duncan was walking out of his office, and I just remarked to Mr. Duncan, you know, "What's that noise? Do you guys have a shredder up here?"

Mr. Duncan confirmed that, yes, they did have a shredder on the floor.

Q. As best you can recall, what did he say?

A. He -- best I can recall, he says, "Yeah, we do. We have -- we use it for, you know, client confidential information routine basis."

My response to him was, "Well, this wouldn't be the best time in the world for you guys to be shredding a bunch of stuff."

And Mr. Duncan's response was, "Sure. I can understand that, in your position, you know, worst-case scenario is that when you go into a situation like this and people are destroying a lot of documents." [5902]

Q. Okay. Did he explain to you or communicate to you what kind of documents they were shredding?

A. Well, again, he said client confidential information, routine.

* * *

[5978]

* * *

Q. Well, actually, why don't I just use a specific example.

On November 5th, you told the jury that at that point you knew that there would be restatement that was required and that there needs to be restatement. And [5979] everyone knew on November 5th at Arthur Andersen on the core group and at ENRON, and the

management said that there was going to be restatement; right?

A. That's correct.

Q. That issue was discussed before the 5th, wasn't it?

A. Yes, it was.

Q. It's not like everyone just showed up on the 5th and said, Hey, I've got a new issue. Let's discuss the possible restatement, and everyone decided at that very day; right?

A. No. That did not occur.

Q. And the reason is because people like you are called in early to see what the problems are and to discuss whether that's going to be -- need to have happened; correct?

A. I'm not sure I follow. I mean, it's certainly because what had occurred on the 5th was the culmination of work that we had been doing while we were down there.

Q. Okay. In terms of your own mind -- we'll then talk about what anyone else said -- did you come to any sort of view before the 5th whether you thought a restatement would be necessary?

Let's take necessary first.

A. On the one issue regarding the reclassification of the $1 billion in the first or second quarter of 2001, I believe that that was necessary and appropriate.

With respect to the other issues that affected [5980] the income statement, I had not reached a conclusion until the 5th of November.

Q. Okay. Let's break it down.

On the reclassification, when did you come to your own conclusion?

A. It was -- it was pretty early once I understood the -- you know the nature of the item. So --

Q. Can you give us a date?

A. I'm sorry. I can't.

Q. Can you give us a ballpark?

A. Ballpark, I would say, you know, we had all the facts on that one on probably the 29th or the 30th of October, and had reached -- I had reached, at least, my conclusion by that

point in time.

Q. So by the 29th, 30th or so, thereabouts, John Riley had in his head that, on that issue, a restatement would be necessary?

A. That's correct.

Q. Now, with respect to the other issues, I believe you said that you didn't decide until later that it would be necessary. But my question to you is not when you decided it would be necessary, but -- well, I think that is what I initially asked you.

Did you come to any sort of view about whether it would be likely or not before the 5th? [5981]

A. Not really, because I didn't have information regarding the -- you know, the size of the transactions that we were talking about. And that's what you need to have available to you so that you can make a materiality assessment.

Q. Now, did you get all of that information on the 5th?

A. Substantially, I believe.

Q. So you -- no one made that available to you before that?

A. I just don't recall. We were getting pieces of information throughout that weekend; but I think, you know, everything came together on the 5th, and we communicated it to the audit committee.

* * *

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA	:	Criminal Action
	:	No. H-02-121
vs.	:	Houston, Texas
	:	
ARTHUR ANDERSEN, LLP,	:	June 4, 2002
Defendant	:	9:02 a.m.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE MELINDA HARMON
AND A JURY

Volume XXIII

* * *

[Testimony of John M. Riley]

[6111]

* * *

BY MR. WEISSMANN:

Q. Mr. Riley, is this a deposition that you gave to the SEC in the Sunbeam matter?

A. Yes, it is.

MR. WEISSMANN: Your Honor, we offer Page 399, lines 11 through 25.

THE COURT: Let's come up to the bench, please.

(At side bar.)

* * *

[6119]

* * *

(Side bar concluded.)

BY MR. WEISSMANN:

Q. Mr. Riley, I'm going to take you back to line 11, and I think we may have this on the screen.

MR. WEISSMANN: But don't put it up yet.

The Government renews its offer of lines 11 through 25 on Page 399.

THE COURT: It's admitted.

MR. WEISSMANN: Okay. Now -- sorry, Agent Patkus. If you have it, if you can put that up.

BY MR. WEISSMANN:

Q. And I think we were asking -- when we broke, the question was -- and I'll do the questions -- "Did anybody ever, and I'm not asking you for conversations with counsel, did anybody ever suggest to you that, or have a conversation with you where a suggestion was made that Arthur Andersen might have a problem with the SEC?"

And did you say, "With respect to this particular engagement?"

A. Probably, yes. [6120]

Q. You're not disputing that you said it, are you?

A. No.

Q. And the question then, which was not exactly in the form of a question, was "Yes."

And then did you give an answer?

A. Yes, I did.

Q. Can you read exactly what you said.

A. The transcript reflects: "I think that you know from the very beginning of a situation like this that you got a potential problem with the SEC because when you have got an article in a major business publication questioning your client's accounting, you can reasonably expect that the SEC isn't going to throw it in the trash can. So, I think we knew

that the investigation was going to take place from the date that we saw the article and so, yes, there is a potential for a problem," period.

* * *

[6196]

* * *

Q. And this particular -- if they had been restated, have you had experience before with companies restating their balance sheet as opposed to restating their income?

A. Yes, I have.

Q. And what have -- how often have you seen that?

A. I've seen it on numerous cases while I was with the SEC.

Q. How is it that the company might have a misstatement on the balance sheet that may have to be corrected?

A. Well, this particular issue is the source of comments by the Division of Corporation Finance fairly frequently. It's an inadvertent error that, you know, companies unfortunately make from time to time, and it does occur. I can't tell you're how many times per year, but it happens.

Q. And what is your experience as to how the SEC handles these errors or inadvertent errors on balance sheets periodically when they surface, like this one did?

A. My experience with this particular issue is that the SEC typically tells the company to restate their financial statements to reflect the change in the balance sheet and it's handled within the Division of Corporation Finance.

Q. Meaning what as to terms of whether there's an actual investigation launched and subpoenaing of documents? [6197]

A. Typically, that an investigation would not follow an error of that sort.

Q. Based on your experience, what was your state of mind and expectation as to the impact this restatement of the balance sheet would have on the SEC in terms of whether it would open an investigation and request Arthur Andersen documents?

A. I did not believe that an investigation would result from the correction of that particular error.

Q. Okay. So though you had concluded a balance sheet restatement would need to be made, did that have any effect on you believing that Arthur Andersen would be either the subject of a subpoena for its documents or any investigation?

A. No, sir, it did not.

Q. When you tell Mr. Weissmann, then, in the middle of October you still were not thinking of the SEC asking for Arthur Andersen's documents, is that a true or untrue statement?

A. Toward the -- well, towards the end of October, when I got involved, I really did not have in my mind any request by the SEC for our documents. That's not my consideration when I get into a situation like this.

Q. Can you recall a time that the SEC ever asked a company or expected a company to restate their balance sheet error that they did request documents and launch an investigation? **[6198]** Just from your own personal knowledge. That's all I'm asking you.

A. I'm not aware of one.

Q. All right. And was that knowledge all part of your mindset back in October of 2001?

A. Again, to the extent that I considered the -- when I thought about that particular balance sheet error, I didn't think that this was the type of thing that the SEC would launch an investigation for.

Q. Now, on the other hand, if a company announces a restatement of earnings of income, what would you expect from the SEC when that happens?

A. Again, depending on the magnitude of the

adjustment, the availability of the company and number of factors that the SEC uses in determining whether or not they're going to investigate particular things, certainly an investigation of that type of restatement could ensue.

* * *

[6202]

* * *

Q. What -- would you tell us what was going through your mind as to what would have been permissible and what would have been impermissible as far as you were concerned when you had the conversation with Mr. Duncan on the 26th about shredding documents? Mr. Weissmann just asked you about it and you partly addressed it.

As far as you were concerned -- let me do it **[6203]** this way: As of the 26th of October, would it have been permissible as far as you were concerned for the engagement team to be shredding of documents?

MR. WEISSMANN: Objection to permissible.

BY MR. HARDIN:

Q. Well, would you think it would have been proper or improper for any documents to be shredded as of the 26th of October by the engagement team?

MR. WEISSMANN: Your Honor, I have no objection. If it's under the firm's document policy would, it be permissible. If it's a question of what does the law require, then I do object.

MR. HARDIN: I'm not asking about the law.

MR. WEISSMANN: That's something the Court will decide.

MR. HARDIN: Could you -- I agree with that last statement. Could you write that down, Judge? It's 2:25 and we agree.

THE COURT: It's the second time today.

MR. HARDIN: We're on a roll. This is dangerous.

BY MR. HARDIN:

Q. But I'm not asking you the law. He's right. I agree with him. What I'm asking you is what was in your mind.

I believe you testified to Mr. Weissmann about a conversation. You said, "This would not be a good time to [6204] be shredding documents" or something?

A. Right.

Q. And I'm asking you: What did you mean by that? What was in your mind, first of all, as to whether it would be permissible to shred some or a lot or not any or what?

A. Okay. I've got a couple of questions there. Let me try.

In my view, it would have been -- it would have been appropriate for the company -- for our engagement team to continue to discard, destroy, shred, whatever, confidential client information that was unrelated to the issues that were at hand. So, for example, when I communicated to Mr. Duncan, my concern about, you know, shredding a bunch of stuff, you know, it certainly in my view would not have been appropriate for the engagement team to have been destroying documents related to the related-party transactions and the special purpose entities that we were going to be looking into.

On the other hand, since the engagement team was in the middle of their completing their review of the third quarter financial statements, to the extent that they were getting documentation in connection with that review unrelated to the SPEs, unrelated to Mr. Fastow's entities, I didn't see any problem with that continued -- continuing to be discarded in the normal course. [6205]

Q. Well, what about drafts? Are you speaking of final documents or drafts and so? For instance, what was your view at that time as to whether drafts would be discarded?

A. I would not have objected to that. I believe that would have continued to be appropriate.

Q. All right. As a matter -- so if they were discarding

drafts of documents that -- where there's a succeeding or superseding file memo, as far as you were concerned, when you talked to him on that 26th, would that have been okay?

A. Yes, sir.

Q. All right. If they were retaining the final memos of the Raptor memos at that time and, therefore, in compliance with the policy as far as drafts and other extraneous matters, in your opinion, would it have been okay for them to be shredding at that time?

I'm not talking about the law. I'm talking about your view.

A. In my personal view, that would have been acceptable.

Q. In fact, at that time, were you drafting any documents or were you doing any kind of disposing of drafts when you had done other documents at that time concerning your investigation?

A. Yes, sir, I was.

Q. Tell us what that was. What did you do?

A. Well, as we were preparing draft agenda for these [6206] various meetings that we were having and with the client personnel as we were sort of drafting scripts for what people, you know, Mr. Duncan and Mr, Goddard and myself were going to say at these meetings, we were disposing of superseded drafts and retaining final copies.

Q. That was being done by all of you?

A. Yes, sir.

Q. So if Mr. Duncan was --

BY MR. HARDIN: May I have just a moment, Your Honor?

THE COURT: You may.

Thank you, Judge.

BY MR. HARDIN:

Q. I'll come back to that subject in a moment.

But did you -- let me ask you this: Why did you wait until January to even mention this conversation with Mr. Duncan?

A. I really was satisfied with the discussion. I really thought in my own mind that, you know, his -- Mr. Duncan's reference to routine client confidential information was a reference to information that was pertinent to the third quarter review; and, you know, I really just thought that that was -- that was okay, and it was, you know, more or less an innocuous conversation.

Q. And did you discard it until later when you heard about [6207] this whole issue? Is that correct?

A. Yes, sir, that's correct.

MR. WEISSMANN: I missed it. I just didn't hear the question.

MR. HARDIN: "Discard," which really was not a good way to put it.

BY MR. HARDIN:

Q. Let me put it -- did you put it on the back burner in your own mind?

A. I didn't have a second thought about it until January sometime.

Q. All right. Now, if, in fact, they had been -- if what was being discarded at the time you heard this fax going and everything were agendas and earlier drafts of documents and things like that, would you have any -- would you have said, "David, don't do it"?

A. No, I wouldn't.

MR. WEISSMANN: Objection.

MR. HARDIN: Okay.

MR. WEISSMANN: I do have an objection to that hypothetical.

THE COURT: All right. I will sustain the objection, but we've already got an answer. So...

* * *

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA	:	Criminal Action
	:	No. H-02-121
vs.	:	Houston, Texas
	:	
ARTHUR ANDERSEN, LLP,	:	June 5, 2002
Defendant	:	9:19 a.m.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE MELINDA HARMON
AND A JURY

Volume XXIV

* * *

[6340]

* * *

THE COURT: * * *

Specific instructions. The indictment charges in relevant part, quote, on or about and between October 10, 2001, and November 9, 2001, within the Southern District of Texas and elsewhere, including Chicago; Illinois; Portland, [6341] Oregon; and London, England, Andersen, through its partners and others, did knowingly, intentionally, and corruptly persuade and attempt to persuade other persons, to wit, Andersen employees with intent to cause and induce such persons to, A, withhold records, documents, and other objects from official proceedings; namely, regulatory and criminal proceedings and investigations and, B, alter, destroy, mutilate, and conceal objects with intent to impair the object's integrity and availability for use in such official

proceedings.

Title 18, United States Code, Sections 1512(b)(2) and 3551 and following. Title 18, United States Code, Section 1512(b) provides that—I'm sorry. I should have said close quote.

Now, starting again, Title 18, United States Code, Section 1512(b) provides that, quote, whoever knowingly and corruptly persuades another person, or attempts to do so, with intent to cause or induce any person to withhold a record, document, or other object from an official proceeding or alter, destroy, mutilate, or conceal an object with intent to impair the object's integrity or availability for use in an official proceeding shall be guilty of a crime, close quote.

In order to prove Andersen's guilt—I'm sorry. In order to prove Andersen guilty of violating this [6342] provision, the Government must prove each of the following two elements beyond a reasonable doubt:

First, that on or about the dates charged, the Andersen firm through its agents corruptly persuaded or attempted to corruptly persuade another person or persons; and second, that Andersen through its agents acted knowingly or with intent to cause or induce another person or persons to, A, withhold a record or document from an official proceeding or, B, alter, destroy, mutilate, or conceal an object with intent to impair the object's availability for use in an official proceeding.

A, quote, official proceeding, close quote, is a proceeding before a federal court, judge, or agency. In this regard, you are instructed that the Securities and Exchange Commission, otherwise known as the SEC, is a federal agency, and that a, quote, official proceeding for this case is a proceeding before a federal agency such as the SEC.

A proceeding before a federal agency includes all of the steps and stages in the agency's performance of its governmental functions and it extends to administrative as well as investigative functions, both formal and informal. For purposes of this case, a civil lawsuit brought by private

litigants is not an official proceeding.

For the first element, to determine whether Andersen corruptly persuaded, quote, another person, close [6343] quote, an employee or partner of Andersen is considered, quote, another person, close quote. To, quote, persuade, close quote, is to engage in any non-coercive attempt to induce another person to engage in certain conduct.

The word, quote, corruptly, close quote, means having an improper purpose. An improper purpose for this case is an intent to subvert, undermine, or impede the fact-finding ability of an official proceeding.

In order to establish this corrupt persuasion element, the Government must prove that the agent of Andersen who engaged in the persuasion, not the other person persuaded, possessed the improper purpose. The improper purpose need not be the sole motivation for the Defendant's conduct so long as the Defendant acted, at least in part, with that improper purpose.

Thus, if you find beyond a reasonable doubt that an agent, such as a partner, of Andersen acting within the scope of his or her employment induced or attempted to induce another employee or partner of the firm or some other person to withhold, alter, destroy, mutilate, or conceal an object and that the agent did so with the intent, at least in part, to subvert, undermine, or impede the fact-finding ability of an official proceeding, then you may find that Andersen committed the first element of the charged offense.

The second element of the charged offense—[6344] obstruction offense is that Andersen, through its agents, acted knowingly and with the intent to cause or induce another person to withhold a record or a document from an official proceeding or to alter, destroy, mutilate, or conceal an object with intent to impair the object's integrity or availability for use in an official proceeding.

An act is done with the intent to impair the integrity or availability of a document or object only if it is undertaken

with the specific purpose of making the document or object unavailable for use in an official proceeding.

However, the Government is not required to prove that Andersen's sole or even primary intent was to cause another person to make a document or object unavailable for use in an official proceeding. You may find that this intent element has been established if you conclude that Andersen acted, at least in part, with the intent to cause another person to make a document or object unavailable for use in an official proceeding.

In order to establish that Andersen committed the charged offense, it is not necessary for the Government to prove that an official proceeding was pending or even about to be initiated at the time the obstructive conduct occurred. Nor is it necessary for the Government to prove that a subpoena had been served on Andersen or any other **[6345]** party at the time of the offense.

The Government need only prove that Andersen acted corruptly and with the intent to withhold an object or impair an object's availability for use in an official proceeding, that is, a regulatory proceeding or investigation whether or not that proceeding had begun or whether or not a subpoena had been served.

Furthermore, it is not necessary for the Government to prove that Andersen knew that its conduct violated the criminal law. Thus, even if Andersen honestly and sincerely believed that its conduct was lawful, you may find Andersen guilty if you conclude that Andersen acted corruptly and with the intent to make documents unavailable for an official proceeding.

Moreover, the Government is not required to prove that Andersen was successful or likely to succeed in subverting, undermining, or impeding the fact-finding ability of an official proceeding. Nor is the Government required to prove that Andersen was successful or likely to succeed in making documents unavailable for that proceeding. It is Andersen's purpose and intent, not the success of its effort

that the Government must prove as elements of the charged offense.

* * *

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

[Caption Omitted in Printing]

GOVERNMENT'S MEMORANDUM OF LAW IN OPPOSITION TO ANDERSEN'S MOTION FOR A JUDGMENT OF ACQUITTAL OR A NEW TRIAL

* * *

B. The Hearsay Information Proffered by ANDERSEN Supports ANDERSEN's Guilt

In spite of the overwhelming evidence of its guilt, ANDERSEN argues that the hearsay information from jurors after the verdict demonstrates that ANDERSEN was not properly convicted of a crime. It is wrong.

Even assuming that the jury based its verdict solely on the instructions by Temple reflected in GX 1018B, and even assuming that such evidence was competent to be considered, ANDERSEN has still properly been adjudged to be guilty as charged. Temple advocated the creation of a deliberately misleading document to supersede a more damaging and accurate draft version which would be destroyed. Temple sanitized the record in order to protect ANDERSEN from outside prying eyes i.e., the SEC, which she fully expected at the time to be conducting an investigation of ANDERSEN. In sum, Temple was not giving legal advice; she was giving illegal advice.

In contrast to ANDERSEN'S new contention in its brief, the testimony about the circumstances surrounding GX 1018B figured prominently in the trial and in the government's jury addresses. The context in which Temple gave the instructions reflected in GX 1018B were thoroughly developed at trial through several witnesses,

most notably David Duncan, Benjamin Neuhausen, John Stewart and two SEC representatives. During the summations of the government, Temple's creation of the misleading memorandum was explicitly and repeatedly addressed and argued, among other proof of ANDERSEN's guilt. Indeed, after being directly invited by the prosecution to examine GX 1018B during its deliberations, the jury did just that. The jury asked and received all testimony from Duncan regarding the third-quarter Enron press release. See jury note 11; trial transcript ("TR") at 6648, 6835, 6888-89.[6]

We briefly summarize that evidence herein to refute the claim now advanced by ANDERSEN that in reaching its verdict the jury cobbled together tenuous and tangential evidence that was never elicited or argued by the government.

Duncan testified that he considered the draft of Enron's third-quarter press release to be misleading because it characterized significant losses as "non-recurring," although they were in core Enron businesses. He brought the draft Enron press release language to the attention of others within ANDERSEN, including Temple. TR at 1797-98. A large conference call was held shortly before the issuance of the press release by Enron on October 16, 2001, at which various ANDERSEN partners, including Temple, discussed Enron's proposed use of the term "non-recurring" to characterize losses of hundreds of thousands of dollars. TR at 961, 5590. Neuhausen and Stewart testified that everyone agreed that the proposed press release was "misleading." TR at 967-68, 5591-92. Neuhausen testified that he too believed that the proposed language was

---

[6] In rebuttal summation, the jury was explicitly asked to pay particular attention to GX 1018B as "devastating proof," as it was a perfect example of how a draft document was important to a government investigation, since it revealed the truth far better than a sanitized final version. TR at 6646-48; see also TR at 6609-11 (main summation, addressing importance of GX 1018B as evidence of Temple's sanitizing the record in anticipation of litigation).

misleading, both because it reflected losses in core businesses and because gains in the same areas had not been characterized by Enron as non-recurring. Neuhausen believed it to be misleading for Enron to characterize bad news as one-time events but good news in the same business area as not non-recurring. TR at 967-69.

Indeed, Neuhausen explicitly testified that it would not be accurate for a memorandum reflecting ANDERSEN's position to state that the firm had not concluded that the draft press release was misleading. An accurate memorandum would state that the firm had concluded that it was misleading. TR at 969.

As a result of this consensus, Duncan was tasked by the group on the conference call with being its emissary to Enron to apprize it of ANDERSEN's position. TR at 1798, 5593. Duncan did so, and conveyed to Rick Causey, Enron's Chief Accounting Officer, that ANDERSEN considered the use of the term non-recurring to be misleading and that companies had been scrutinized by the SEC for such conduct. Duncan testified that Temple had conveyed that information to him, since Duncan himself did not know that information. Enron declined to change the release. TR at 1799-1800, 1805-06.

Two SEC witnesses testified to the reason ANDERSEN's determination as to whether the release was misleading was important. Under the securities laws, if ANDERSEN determined that Enron was going to commit a materially misleading act, ANDERSEN could face liability if it failed to take adequate steps to have Enron change its course of conduct. Although ANDERSEN voiced its concerns to one Enron official, it did not take the necessary follow-up action, such as going to Enron's Audit Committee, Board of Directors, or reporting Enron to the SEC. TR at 416-18, 793-94. Although ANDERSEN voiced its concerns to an Enron official, it did not take the additional steps of either going to Enron's Board of Directors or reporting Enron to the SEC. As such, ANDERSEN's conduct was

consistent with overwhelming trial evidence that it had abdicated its role as watch dog in favor of that of a lap dog to Enron, its second largest client worldwide.

With that backdrop, Duncan was told to memorialize what had transpired regarding the Enron third-quarter press release. His draft memorandum, one of the documents comprising GX 1018B, was received by Temple. She responded in an E-mail, which attached a revised version of the Duncan draft memorandum, all of which were included in GX 1018B. In the most critical portion of the E-mail, Temple advised Duncan, "I suggested deleting some language that might suggest we have concluded the release is misleading." And the attached memorandum from Temple deleted, among other things, references to the term misleading.[7] TR at 1800-07; GX 1018B.

But, contrary to Temple's E-mail, in fact ANDERSEN had concluded that the term "non-recurring" was misleading

---

[7] Temple also made other deletions to the draft memorandum. She deleted references to herself and to consultation with the legal group. As to the former, Temple explained that such a reference would increase the likelihood of her being a witness. As to the latter, Temple explained that it was arguably a waiver of attorney-client privileged advice.

Temple's first concern evidenced her awareness that litigation was on the horizon, particularly when considered in light of her many other instructions during this period to delete the names of lawyers and non-lawyers from memoranda, so as not to be, in her words, in the "testifying limelight." See GX 1025E (10/25/01 E-mail from Temple explaining her deletion of the names of ANDERSEN non-legal personnel: "I understand that it would be helpful to send a message that the highest levels are addressing this, but I think we should keep them out of the testifying limelight if we can.")

As to Temple's second concern, her reasoning even if credited is seriously flawed. Temple deleted from the draft memorandum the reference to consultation with the legal group. A reader of the final memorandum would thus not know from the face of the memorandum that the legal group was consulted. The "waiver" Temple professed to be concerned about had either occurred already (by Duncan's discussion with Enron) or it had not; the internal documentation could not waive the privilege. It could, however, serve to reveal what truly had occurred.

and Temple knew it. The revised Temple document demonstrated in concrete terms how a final version of a document was less accurate than a draft. It was a dramatic demonstration of how a draft that accurately reflected the facts could be sanitized to paint a rosier picture to the outside world.

ANDERSEN argues that the revised false documentation by Temple cannot constitute obstruction of justice. It is wrong. The statute charged in this case is title 18, United States Code, sections 1512(b) (2) (A) and 1512(b)(2)(B). Those sections make it a crime to, among other things, corruptly persuade a person to "withhold a record, document or other object from an official proceeding," or "alter, destroy, mutilate or conceal an object with intent to impair the object's integrity or availability for use in an official proceeding."

Temple's actions clearly were an attempt to withhold an object (the draft memorandum) and to alter, destroy, and conceal that object. ANDERSEN's argument that Temple's edits did not "alter" the Duncan draft memorandum tortures the English language and the clear meaning of the statute. In this case, Temple altered the draft version of a document so that the final version of that document—which would serve as the internal ANDERSEN memorandum documenting its position regarding the Enron third-quarter press release—would present a more favorable view of what had transpired and hide the fact that ANDERSEN had concluded that Enron's press release was misleading. She thus clearly altered and attempted to alter the draft documentation. Contrary to ANDERSEN's view, Congress certainly did not mean Section 1512's prohibition on "alter[ing]" a document to apply only to those few companies that may still use whiteout to make changes to typewritten drafts of documents. ANDERSEN cites no court that has adopted such an absurd interpretation of the alteration prong of Section 1512(b)(2)(B). The statute applies equally well to attempted obstructive changes and

alterations made to an object that resides in electronic form in a computer.

In any event, even if (contrary to fact and law) Temple did not "alter" the draft document, she clearly attempted to "withhold," "destroy," and "conceal" that draft document, since the jury could readily infer that she intended her final version to supersede the draft memorandum, which would be discarded. See, e.g., GX 1018B (A-004625) (Temple wants her name deleted from the draft memorandum so she will not be a witness, a position that would be meaningless if the draft memorandum were intended by her to be retained); DX 476 (Temple E-mail to Stewart, dated 10/14/01, regarding deletion of draft documents by implementation of document policy); GX NT1009 (10/9/01 Temple notes reflecting view that an SEC investigation was "highly probable.").[8]

* * *

[8] ANDERSEN's hypothetical scenarios regarding actions Temple could have taken with respect to the draft memorandum, set forth in footnote 2 of its brief, are unenlightening and inapposite. If Temple instructed Duncan before or during the creation of the draft memorandum to change it so it was deliberately factually inaccurate she would still be guilty of obstruction of justice. There is no meaningful difference between (a) ANDERSEN's hypothetical scenarios, (b) coaching a witness to lie, and (c) the actions that Temple in fact took and which were proven beyond a reasonable doubt at trial. All are prohibited by the obstruction statutes. 18 U.S.C. §§ 1512(b)(1), 1512(b)(2)(A), 1512(b)(2)(B) and 1503.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

[Caption Omitted in Printing]

BRIEF OF APPELLANT ARTHUR ANDERSEN, LLP

* * *

1. The district court erroneously refused to instruct the jury that Andersen could be convicted only if the obstruction was directed to a particular official proceeding

The district court charged the jury that an "official proceeding" "includes all of the steps and stages in the [federal] agency's performance of its governmental functions, and it extends to administrative as well as investigative functions, both formal and informal." R. 1254-1255.[24] With that as background, the court proceeded to

[24] This aspect of the instruction itself was wrong: an informal SEC inquiry, which is not initiated by a vote of the Commission and which does not have subpoena power, is not an "official proceeding" within the meaning of section 1512(b)(2). As defined by Congress, an "official proceeding" includes "a proceeding *before* a Federal Government agency which is authorized by law." 18 U.S.C. § 1515(a)(1)(C) (emphasis added). A description speaking of proceedings "before" an agency cannot sensibly be read to reach simple investigations like preliminary SEC inquiries. *See United States v. Kelly*, 36 F.3d 1118, 1127 (D.C. Cir. 1994) ("mere police investigation" is not a "proceeding") (construing 18 U.S.C. § 1505) (internal quotation marks omitted). Thus, the leading case on what constitutes an SEC proceeding for purposes of the obstruction statutes, *United States v. Batten*, 226 F. Supp. 492 (D.D.C. 1964), held that the term "proceeding" in 18 U.S.C. § 1505 included "any investigation *directed by a formal order of the Commission*, at which a designated officer takes testimony under oath." *Id.* at 494 (emphasis added). By this measure, preliminary inquiries by SEC staff are *not* official proceedings. The agency's regulations define a "proceeding" as "any agency process initiated by an order instituting proceedings." 17 C.F.R. § 201.101(a)(9) (2003). An "order instituting proceedings," in turn, "means an order issued by the Commission commencing a proceeding or an order issued by the Commission to hold a hearing." *Id.* at § 201.101(a)(7). It is "[t]he issuance of an order authorizing a formal investigation [that] gives the SEC staff subpoena power." Thomas Lee Hazen, LAW OF SECURITIES REGULATION § 16.27[7](4th ed. 2002) (citing 15 U.S.C. § 787(b)).

instruct the jury, over Andersen's objections, as follows:

> In order to establish that Andersen committed the charged offense, it is not necessary for the government to prove that an official proceeding was pending, or even about to be initiated, at the time the obstructive conduct occurred. Nor is it necessary for the government to prove that a subpoena had served on Andersen or any other party at the time of the offense. The government need only prove that Andersen acted corruptly and *with the intent to withhold an*

* * *

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

[Caption Omitted in Printing]

BRIEF FOR THE UNITED STATES

* * *

law to which "ignorance ... is no defense." Cheek, 498 U.S. at 199.[33]

B. The District Court Correctly Instructed The Jury On The "Official Proceeding" Requirement.

In relevant part, Section 1512(b)(2) requires proof that the defendant acted with an intent to impair the object's integrity or availability for use in an "official proceeding." 18 U.S.C. § 1512(b)(2).[34] Although

[33] Andersen cites (Br. 67-68) United States v. Frankhauser, 80 F.3d 641 (1st Cir. 1996), but that case does not hold that persuasion is only corrupt if the actor knows that the conduct is unlawful. Indeed, in Frankhauser, the First Circuit expressly stated that it had yet "to decide what state of mind a defendant must have with respect to an official proceeding in order to violate section 152 ...." Id. at 652. Ultimately, Frankhauser did not adopt a general rule going to this question, and instead cautioned that "[e]ach case must be evaluated on its own facts." Id. Thus, as the district court noted, R. 912, in upholding the defendant's conviction under Section 1512 in Frankhauser, the First Circuit merely concluded that the defendant "had the requisite mens rea, whatever it is. In other words, the Court did not hold that knowledge is a necessary condition, only that it is sufficient.

Andersen also cites (Br. 68) Reeves, 752 F.2d at 999, but that case is clearly inapposite as it does not address the knowledge requirement under Section 1512.

[34] The statutory term "official proceeding' includes "a proceeding before a Federal Government agency which is authorized by law." 18

the district court instructed the jury about

* * *

U.S.C. 1515(a)(1)(C). In a footnote, Andersen contends that a preliminary SEC investigation is not an "official proceeding." Andersen Br. 70 n.24. This Court should decline to consider this claim. See United States v. Restrepo, 986 F.2d 1462, 1463 (2d Cir. 1993) ("We do not consider an argument mentioned only in a footnote to be adequately raised or preserved for appellate review."). In any event, a preliminary investigation by the SEC fits comfortably within the statutory definition of an "official proceeding." R. 822-828, R. 910-911; see United States v. Senffner, 280 F.3d 755, 761 (7th Cir. 2002); United States v. Leo, 941 F.2d 181, 199 (3d Cir. 1991); United States v. Mitchell, 877 F.2d 294, 301 (4th Cir. 1989); United States v. Browning, Inc., 572 F.2d 720, 724 (10th Cir. 1978); Rice v. United States, 356 F.2d 709, 712-13 (8th Cir. 1966).

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

[Caption Omitted in Printing]

REPLY BRIEF OF APPELLANT ARTHUR ANDERSEN, LLP

* * *

B. The Jury Instructions Improperly Diluted The Required Nexus to An "Official Proceeding"

1. *"Official Proceeding"*

The indictment in this case did not allege that Andersen's conduct was intended to interfere with any "official proceeding" that was pending at the time of the allegedly corrupts acts. R. 1-8. The government nevertheless suggests that the court's instructions defining "official proceeding[s]" properly encompassed the SEC's informal inquiry to Enron on October 17, 2001. DOJ Br. 92-93 n.34. But the government does not even attempt to explain how this informal inquiry—which does not satisfy the agency's own regulatory definition of a "proceeding" (Andersen Br. 70 n.24)—could possibly qualify as a "proceeding" for the purposes of the criminal obstruction statutes, which must be narrowly construed in Andersen's favor. *See Aguilar*, 515 U.S. at 600.

None of the cases the government cites (at DOJ Br. 92-93 n.34) held that a preliminary inquiry conducted by government investigators without subpoena power constitutes an "official proceeding" within the meaning of the statute. Instead, a number of cases, including one cited by the government, recognize that the authority to secure subpoenas represents an appropriate line of demarcation

between a "proceeding" and other matters within the jurisdiction of an agency. *See, e.g., United States v. Senffner*, 280 F.3d 755, 761 (7th Cir. 2002) (noting that authority to issue subpoenas and administer oaths distinguishes an SEC investigative proceeding "from a mere police investigation"); *United States v. Batten*, 226 F. Supp. 492 (D.D.C. 1964).[10]

* * *

[10] The government did not contend that any of the alleged acts of persuasion upon which the indictment is based occurred after October 31, 2001, the date on which Andersen became aware that an investigative "proceeding" with subpoena powers had been authorized by the SEC.